

No. 15865

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United States  
Court of Appeals  
For the Ninth Circuit

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WILLIAM CECIL POOL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

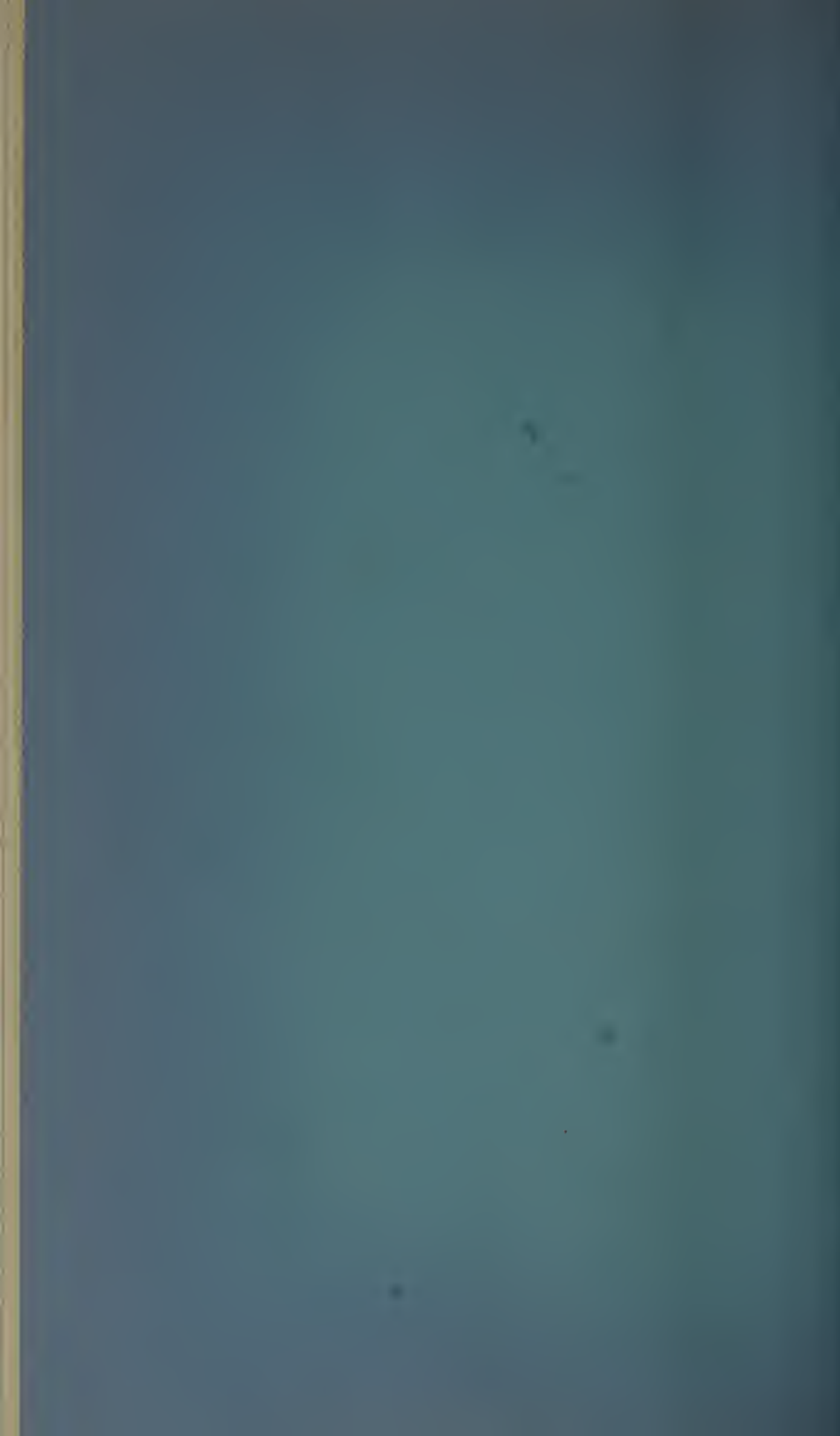
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Appeal from the United States District Court  
for the District of Nevada

FILED

MAR 12 1958

PAUL P. O'BRIEN, CLERK



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Court of Appeals  
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**Appeal from the United States District Court  
for the District of Nevada**

# THEORY

## CHAPTER I

### THEORY OF THE EARTH

1.

The Earth is a sphere of radius  $R$  and mass  $M$ .

Let  $\rho$  be the

density

of the material of which it is composed.

Then the

volume

of the Earth is  $\frac{4}{3}\pi R^3$ .

Therefore the

mass of the Earth is  $\frac{4}{3}\pi R^3 \rho$ .



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavits in Opposition to Defendant William Cecil Pool's Motion for New Trial.....	25
Carlson, Victor L.....	33
Henderson, William R.....	28
Martin, Charles L.....	26
Wolf, Ramona .....	31
Attorneys, Names and Addresses of.....	1
Certificate of Clerk to Record on Appeal.....	312
Charge Filed October 17, 1957.....	6
Comments Made Outside the Presence of the Jury .....	22
Docket Entries .....	302
Indictment .....	3
Notice of Appeal.....	35
Order Extending Time.....	23
Order on Motion of William Cecil Pool for New Trial .....	34
Statement of Points on Appeal.....	314
Transcript of Oral Argument on Defendant Pool's Motion for New Trial.....	280

INDEX	PAGE
Transcript of Proceedings.....	37
Motion for Acquittal.....	223
Witnesses, Defendants':	
Davidson, Arthur	
—direct .....	251, 253
—cross .....	254
—redirect .....	255
Dickerson, George	
—direct .....	257, 268
—cross .....	271
Ferguson, Al	
—direct .....	224
—cross .....	232, 235
Fisher, Thomas N.	
—direct .....	265
—cross .....	268
Harrison, Phyllis Louise	
—direct .....	263
Leeds, Billy Richard	
—direct .....	235
—Cross .....	240, 241
Witnesses, Plaintiff's:	
Carlson, Victor L.	
—direct .....	163
—voir dire .....	200
—cross .....	195, 204
—redirect .....	204

## Witnesses, Plaintiff's—(Continued):

Crisler, George F.

—direct .....	118, 121
—voir dire .....	121
—cross .....	122

Davidson, Arthur

—direct .....	46
—cross .....	49, 50

French, Dr. J. B.

—direct .....	76
—cross .....	81

Gaither, Coite M., Jr.

—direct .....	128, 140, 159
—cross .....	148, 157

Nelson, Robert M.

—direct .....	38
—cross .....	45

O'Reilly, William

—direct .....	220
—cross .....	222

Sage, Ray L., Jr.

—direct .....	50, 86
—cross .....	92, 116, 117
—voir dire .....	99
—redirect .....	118

## Witnesses, Plaintiff's—(Continued):

Stewart, W. Albert, Jr.

—direct ..... 123

Trick, Viola

—direct ..... 74

Witte, William N.

—direct ..... 215

Wolf, Ramona

—direct ..... 207, 211

—voir dire ..... 209





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For the Appellee.





In the United States District Court  
for the District of Nevada

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM CECIL POOL, EDWARD ELLIS  
CLIFTON,

Defendants.

INDICTMENT FOR VIOLATION  
SEC. 242, TITLE 18, USC

The Grand Jury Charges:

Count One

That on or about February 27, 1956, at a point near Nellis Air Force Base, in Clark County, Nevada, and elsewhere in Clark County, Nevada, and within the jurisdiction of this Court, the defendants, William Cecil Pool, who was then and there Chief of the North Las Vegas, Nevada, Police Department, and Edward Ellis Clifton, who was then and there a Captain of the North Las Vegas, Nevada, Police Department, did, while acting under color of the laws, statutes, ordinances and regulations of the State of Nevada, and of the City of North Las Vegas, Nevada, creating the offices and positions aforesaid and prescribing the duties thereof, wilfully subject Ray Lewis Sage, Jr., an inhabitant of the State of West Virginia, to the deprivation of the rights and privileges secured to

him and protected by the Fourteenth Amendment to the Constitution of the United States not to be deprived of his liberty without due process of law, to wit, the right and [2\*] privilege to be secure in his person while in the custody of anyone acting under color of the laws of the State of Nevada, the right and privilege to be immune from force and violence by anyone exercising the authority of the State of Nevada or acting under color of its laws for the purpose of obtaining a confession, statement, or information about an alleged offense, and the right and privilege to be tried for an alleged offense by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Nevada, and not to be subjected to illegal punishment, force and violence by any person acting under color of the laws of the State of Nevada;

That is to say, that at the time and place aforesaid, the defendants, William Cecil Pool and Edward Ellis Clifton, while acting under color of law as aforesaid, did beat with a flashlight, fists, and elbows, and did kick with their feet the said Ray Lewis Sage, Jr., all for the purpose and with the intent of depriving him of the Constitutional rights aforesaid.

In violation of Section 242, Title 18, United States Code.

Count Two

That on or about February 27, 1956, at a point near Nellis Air Force Base, in Clark County,

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**\*Page numbering appearing at foot of page of original Certified Transcript of Record.**

Nevada, and elsewhere in Clark County, Nevada, and within the jurisdiction of this Court, the defendant William Cecil Pool, who was then and there Chief of the North Las Vegas, Nevada, Police Department, did, while acting under color of the laws, statutes, ordinances and regulations of the State of Nevada, and of the City of North Las Vegas, Nevada, creating the office and position aforesaid and prescribing the duties thereof, [3] wilfully subject Coite Martin Gaither, Jr., an inhabitant of the State of South Carolina, to the deprivation of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States not to be deprived of his liberty without due process of law, to wit, the right and privilege to be secure in his person while in the custody of anyone acting under color of the laws of the State of Nevada, the right and privilege to be immune from force and violence by anyone exercising the authority of the State of Nevada or acting under color of its laws for the purpose of obtaining a confession, statement, or information about an alleged offense, and the right and privilege to be tried for an alleged offense by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Nevada, and not to be subjected to illegal punishment, force and violence by any person acting under color of the laws of the State of Nevada;

That is to say, that at the time and place aforesaid, the defendant, William Cecil Pool, while acting under color of law as aforesaid, did beat with

fists and elbows, and did kick with his feet the said Coite Martin Gaither, Jr., all for the purpose and with the intent of depriving him of the Constitutional rights aforesaid.

In violation of Section 242, Title 18, United States Code.

A True Bill:

/s/ ANGELO J. MOUZER,  
Foreman.

/s/ HOWARD W. BABCOCK,  
Assistant United States  
Attorney.

[Endorsed]: Filed October 5, 1956. [4]

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[Title of District Court and Cause.]

### CHARGE

Ladies and gentlemen of the Jury, the United States Attorney has filed in this Court an indictment in two counts against William Cecil Pool and Edward Ellis Clifton, the material part of the indictment being as follows:

#### Count One

On or about February 27, 1956, at a point near Nellis Air Force Base, in Clark County, Nevada, and elsewhere in Clark County, Nevada, and within

the jurisdiction of this Court, the defendants, William Cecil Pool, who was then and there Chief of the North Las Vegas, Nevada, Police Department, and Edward Ellis Clifton, who was then and there a Captain of the North Las Vegas, Nevada, Police Department, did, while acting under color of the laws, statutes, ordinances and regulations of the State of Nevada, and of the City of North Las Vegas, Nevada, creating the offices and positions aforesaid and prescribing the duties thereof, wilfully subject Ray Lewis Sage, Jr., an inhabitant of the State of West Virginia, to the deprivation of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States not to be deprived of his liberty without due process of law, to wit, the right and privilege to be secure in his person while in the custody of anyone acting under color of the laws of the State of Nevada, the right and privilege to be immune from force and violence by anyone exercising the authority of the State of Nevada or acting under color of its laws for [13] the purpose of obtaining a confession, statement, or information about an alleged offense, and the right and privilege to be tried for an alleged offense by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Nevada, and not to be subjected to illegal punishment, force and violence by any person acting under color of the laws of the State of Nevada;

That is to say, that at the time and place aforesaid, the defendants, William Cecil Pool and Ed-



ward Ellis Clifton, while acting under color of law as aforesaid, did beat with a flashlight, fists, and elbows, and did kick with their feet the said Ray Lewis Sage, Jr., all for the purpose and with the intent of depriving him of the Constitutional rights aforesaid.

### Count Two

On or about February 27, 1956, at a point near Nellis Air Force Base, in Clark County, Nevada, and elsewhere in Clark County, Nevada, and within the jurisdiction of this Court, the defendant William Cecil Pool, who was then and there Chief of the North Las Vegas, Nevada, Police Department, did, while acting under color of the laws, statutes, ordinances and regulations of the State of Nevada, and of the City of North Las Vegas, Nevada, creating the office and position aforesaid and prescribing the duties thereof, wilfully subject Coite Martin Gaither, Jr., an inhabitant of the State of South Carolina, to the deprivation of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States not to be deprived of his liberty without due process of law, to wit, the right and privilege to be secure in his person while in the custody of anyone acting under [14] color of the laws of the State of Nevada, the right and privilege to be immune from force and violence by anyone exercising the authority of the State of Nevada or acting under color of its laws for the purpose of obtaining a confession, statement, or information about an alleged offense,

and the right and privilege to be tried for an alleged offense by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Nevada, and not to be subjected to illegal punishment, force and violence by any person acting under color of the laws of the State of Nevada;

That is to say, that at the time and place aforesaid, the defendant, William Cecil Pool, while acting under color of law as aforesaid, did beat with fists and elbows, and did kick with his feet the said Coite Martin Gaither, Jr., all for the purpose and with the intent of depriving him of the Constitutional rights aforesaid.

To both counts of this indictment defendant Pool has entered a plea of not guilty, and to Count I of the indictment defendant Clifton has entered a plea of not guilty. These make up the issues that you are to try. The Government by the indictment filed, charging the accused, and the defendants by their pleas of not guilty, denying every material allegation of the indictment.

Notwithstanding this indictment these defendants, as do all defendants in criminal cases, come into this court clothed in the presumption of innocence, which presumption of innocence remains and abides with them throughout the trial, unless and until the Government has, by competent evidence, convinced the minds of every individual juror of the guilt of the accused beyond a reasonable doubt. A reasonable doubt, ladies and gentlemen,

means just exactly what the term implies—a doubt that would appeal to a [15] reasonable man; a doubt for which you can give yourself a reason. It does not mean an idle, whimsical or fanciful doubt, but a real well-founded doubt.

There are certain matters the court feels it would make clear to you at the outset. The court desires that you clearly understand that the defendants, William Cecil Pool and Edward Ellis Clifton, are not here on trial for a violation of any law of the State of Nevada; for assault or for any other offense that may be charged against them under the laws of Nevada. Neither are the defendants on trial for assault under any law of the United States of America. Defendant Pool is on trial for depriving Ray Lewis Sage, Jr., and Coite Martin Gaither, Jr., of certain rights, privileges and immunities secured and protected to him by the Constitution of the United States, and Defendant Clifton is on trial for depriving Ray Lewis Sage, Jr., of certain rights, privileges and immunities secured and protected to him by the Court of the United States. The Fourteenth Amendment to the Constitution of the United States provides that “no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” This Constitutional provision also provides that Congress may pass appropriate legislation carrying into effect the provisions of the Fourteenth Amendment, which I have just read to you. After the the adoption of the Fourteenth Amendment to the Constitu-



tion, many years ago Congress passed a law which provides that "whoever, under color of any law, statute, ordinance, regulation or custom, wilfully subjects or causes to be subjected, any inhabitant of any State, territory or district, to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution and [16] laws of the United States \* \* \*" shall be punished as the law provides.

The Constitutional provision which I have just read you assures to every citizen of these United States the right and privilege not to be deprived of liberty without due process of law, under color of any law, statute, ordinance, regulation or custom of any State. We are also secure in the right not to be subjected to punishment, pain or penalties other than those prescribed for every person alike. This includes the right to be tried upon a charge upon which one may be arrested—to be brought by due process of law into a court of the State and if found guilty to be sentenced and punished in accordance with the laws of the State. All these rights were secured to Sage and Gaither along with you and me and every one else by the Constitution of the United States, and the Federal Statute under which this indictment is filed fixes the penalty for anyone, who, under color of State authority, denies to anyone of us any of these rights.

The court also desires that you clearly understand that the statute upon which this prosecution is based was not intended to cover and does not

cover personal and individual acts of a citizen wrongfully depriving another citizen of the Constitutional rights guaranteed to him by the Fourteenth Amendment. The statute applies only to one who acts under guise or color of authority of State law and thus brings about the illegal deprivation of Constitutional rights. The statute was not designed to reach, and does not reach the personal individual acts of one person towards another, when the act is not done under color of State law, even though the person committing the act is the holder of a public office. However, it is the [17] law that any misuse of power possessed by virtue of State law, made possible only because the wrongdoer is clothed with authority of State law, is action taken under color of State law. It is important that you keep clearly in mind the legal distinction which I have just pointed out to you between the personal and individual acts of a citizen holding a public office and the illegal misuse of power possessed by virtue of his office, in determining the guilt or innocence of these defendants.

This brings us to the question whether or not Sage was taken into custody by the defendants Pool and Clifton, and whether or not Gaither was taken into custody by Pool, by virtue of the authority vested in Pool and Clifton as officers of the law. An officer of the law does not have the power to divest himself of his official authority in actions taken by him which on their face appear to be actions taken pursuant to his authority, but his of-

ficial position does not deprive him of the right to act as an individual in personal altercations with others. However, his official position does not vest in him the power to engage in personal altercations with other citizens. It only vests in him the power to take persons into custody under a claim that such persons have violated some law. So, ladies and gentlemen of the jury, in determining the guilt or innocence of the defendants here, you must take into consideration the circumstances under which the defendants took Sage and Gaither into custody and determine whether or not in so doing and in doing what they did, the action taken by them was taken "under color of State law."

If you find from the evidence in this case that the defendants took Sage and Gaither into custody under color [18] of law by reason of the positions they held, then the court charges you that Sage and Gaither had the right to be tried upon any charge for which they had been arrested, in a regularly constituted court of justice having jurisdiction and if found guilty subjected to the usual pain and penalties applicable to all persons alike for the offense charged, but not to be subjected to unusual punishment or to be tried by ordeal by the defendants. Those were their constitutional rights and privileges under the Federal Constitution.

Let me repeat the essential issue on this question. As previously stated to you, the Federal Statute under which the defendants are here on trial has no

application to a citizen who acts without color of law; that is, of his own personal volition for his own personal reasons. The act applies only when and only to one who acts under the guise or pretense of authority of law and the statute was not designed to reach private personal controversies between two people. So if you find from the evidence that the defendants were not acting under color of law, but solely in their individual capacities, because of personal animosity toward Sage and Gaither, then what they did constituted only a violation of the State law, which should be remedied in the State courts of Nevada, and is not a violation of any Federal law. But, as I said before, if Sage and Gaither were taken into custody by the defendants, under color of law, by reason of the positions held by the defendants, then the ordeal to which the defendant, Pool, subjected both Sage and Gaither and the ordeal to which the defendant, Clifton, subjected Sage at a point near Nellis Air Force Base constituted a violation of the Federal [19] statute.

Your attention is further specifically called to the language of the statute which provides that "whoever, under color of law," etc., does the act prohibited, shall be guilty of the offense defined in the statute. Now color of law means a mere semblance of legal right. So, color of law, as used in the statute, does not necessarily mean the exercise of some specific legal authority vested in an officer of the law, but also semblance, appearance and



pretense and implies, in the language of the statute, that the act to which it applies need not necessarily have the real characteristics of a legal act. Therefore, we do not have in this case any question as to whether the defendants, in taking Sage and Gaither into custody, acted under authority of any law of Nevada, but whether or not the taking of Sage and Gaither into custody was done under color of law of Nevada, state, county or municipal, arising out of the official positions held by the defendants.

Next, the court calls to your attention the fact that the statute under which the first and second counts are based says, "whoever, under color of any law, statute, ordinance, regulation or custom, wilfully subjects or causes to be subjected any individual to the deprivation of any rights, privileges or immunities secured or protected to him by the Constitution of the United States and the laws of the United States, shall be guilty, etc." The word "wilfully" appearing in this statute, has a meaning and a very distinct and definite meaning that must be carefully considered by you. The statute provides that the thing done must be done wilfully. In law the use of the words, "wilful" and "wilfully" implies a conscious purpose to do wrong. Doing a thing knowingly and wilfully implies not only a knowledge of the thing done, but a determination to do it with bad intent or with an evil purpose or motive. [20] It is not sufficient that the defendants here had generally a bad purpose in doing the things they did. In order to convict Defendants Pool and

Clifton under Count I it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving Sage of a Constitutional right—that is to deprive him of the right to be tried by a court, to be tried in an orderly way and to receive, if found guilty, the usual pains and punishment for any offense he may have committed; and in order to convict Pool under Count II it is necessary for the jury to find that the defendant had in mind the specific purpose of depriving Gaither of a Constitutional right, that is, to deprive him of the right to be tried by a court, to be tried in an orderly way and to receive, if found guilty, the usual pains and punishment for any offense he may have committed.

The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. When they so act they at least act in reckless disregard of constitutional prohibitions or guarantees.

The law denies to anyone acting under color of law, statute, ordinance, regulation or custom the right to try a person by ordeal; that is, for he, himself, to inflict such punishment upon the person as he thinks the person should receive. Now in determining whether this requisite of wilful intent was present in this case you, ladies and gentlemen of the jury, are entitled to consider all the attendant circumstances; the malice, if any, of the defendants

toward the subjects, Sage and Gaither; [21] the weapons used in the assaults, if you find any were used; and the character and duration of the provocation of the alleged assaults, and the time and manner in which they were allegedly carried out. All these facts and circumstances may be taken into consideration from the evidence that has been submitted for the purpose of determining whether the acts of the defendants were wilful and for the deliberate and wilful purpose of depriving Sage and Gaither of their Constitutional rights to be tried by a jury just like everyone else.

The use of the word, "wilfully," in the statute, makes "intent" a material element of the offenses charged in this case. Now, "intent" is something that exists in a man's mind. It is impossible for you to enter into the mind of a defendant to determine the intent with which he acted. Therefore, his intent has to be judged at least by his intelligence, as shown by the evidence; by his experience in life, as shown by the evidence, and generally by judging him as reasonably prudent persons, experienced in the affairs of everyday life, judge each other, and it is the law that a person intends the usual consequences of his acts.

The proof of a general intent to do Sage and Gaither wrong is not sufficient, but a specific intent to deprive them of a Constitutional right is a burden the law casts upon the Government in this case. In considering whether the defendants had such specific intent you may take into consideration what defend-

ants Pool and Clifton did on the day when Sage and Gaither were taken into custody.

Neither color of law nor specific intent may be presumed by you ladies and gentlemen of the jury but both color of law and specific intent must be proven by the [22] government beyond a reasonable doubt.

If you find the acts alleged in the indictment to have been committed, then let me summarize the questions you have to determine:

As to Count I:

(1) Did defendants Pool and Clifton take Sage into custody under color of law?

(2) Did defendants Pool and Clifton specifically intend to deprive Sage of a constitutional right guaranteed to him by the United States Constitution?

(3) Has the government established these two foregoing essentials to your satisfaction beyond a reasonable doubt?

If the government has done so it is your duty to find the defendants guilty in this case. If you have a reasonable doubt upon either of the two essentials, it is your duty to acquit the defendants.

As to Count II:

(1) Did defendant Pool take Gaither into custody under color of law? and



(2) Did defendant Pool specifically intend to deprive Gaither of the constitutional right guaranteed to him by the United States Constitution?

(3) Has the government established these two foregoing essentials to your satisfaction beyond a reasonable doubt?

If the government has done so it is your duty to find the defendant guilty in this case. If you have a reasonable doubt upon either of the two essentials, it is your duty to acquit the defendant. [23]

The local newspapers have published accounts of this trial as it progressed, which, of course, was their right to do. However, if any of you have read any such account you are instructed to entirely disregard the same in arriving at your verdict in this case. In this connection you are instructed that you are to determine the guilt or innocence of the defendants in this case solely upon the evidence presented to you in this courtroom. [24]

Now, ladies and gentlemen of the jury, you have heard and patiently listened to the evidence in this case. You are the sole judges of the evidence, its weight and sufficiency and the credibility of the witnesses. It is your duty to seek to reconcile the testimony of the witnesses so as to make each witness speak the truth; but if, after a full and fair consideration of all the testimony, you find an irreconcilable conflict in the testimony then you must determine what testimony is true and reject such testimony you disbelieve and from the testimony you do believe, find your verdict.

In passing upon the credibility of a witness it is proper to take into consideration the manner of the witness on the witness stand, his candor or want of candor, his intelligence or otherwise, the reasonableness or unreasonableness of his statements, his interest, if any he has, and all circumstances surrounding such witness at the time of giving his testimony and at the time of the happening of the events testified about. You are the sole and exclusive judges of the evidence and the credibility of the witnesses, and as to what has been proven and what has not been proven in this case.

In considering this testimony you are to lay aside any preconceived ideas that you may have as to the wisdom or unwisdom of the particular statute under which these defendants are being tried. You and I are under the sworn obligation to enforce the law as it is given to us by Congress and it is not within our province to pass judgment upon the question of whether any particular statute is good or bad, with the consequences of your verdict you have absolutely nothing to do. As to what may be the result of your verdict is entirely beyond your province. All that you are [25] empaneled and sworn to do is to find a verdict that speaks the truth.

If, after considering all the evidence in this case, you believe from the testimony submitted to the exclusion of and beyond a reasonable doubt that the defendants, William Cecil Pool and Edward Ellis Clifton, are guilty as charged in the indictment, then you should find the defendants guilty. On

the other hand, if you have a reasonable doubt as to the guilt of the defendants, William Cecil Pool and Edward Ellis Clifton, you should find them not guilty.

Upon retiring to the jury room, you will select one of your number to act as foreman, or forelady. The foreman or forelady will preside over your deliberations and be your spokesman in court.

Forms of verdict have been prepared for your convenience.

(Forms of verdict read.)

You will take these forms to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman or forelady fill in, date and sign the form to state the verdict upon which you agree as to each defendant, and then return with your verdict to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Marshal. But bear in mind you are not to reveal to the Court or any person how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached an unanimous verdict.

Dated: October 17th, 1957.

/s/ JOHN R. ROSS,

United States District Judge.

[Endorsed]: Filed October 17, 1957. [26]

[Title of District Court and Cause.]

COMMENTS MADE OUTSIDE THE  
PRESENCE OF THE JURY

October 17, 1957

The Court takes this opportunity to make this comment outside the presence of the jury. The integrity of our courts is a matter of concern to every citizen, and it is especially the duty of judges to maintain the integrity of the courts. The administration of law is not an exact science but is the product of the customs, traditions and laws of the land. During the course of every trial incidents occur which surprise both court and counsel. The law provides in every instance the procedure to be followed if it is thought by either court or counsel that such incidents have interfered with or obstructed justice. The court and counsel are ever solicitous of the rights of defendants in criminal matters.

Yesterday afternoon, after court had recessed, counsel for the government and counsel for the respective defendants came into chambers and advised the Court of an incident which had been reported to them. It appears that as one of the defense witnesses was about to enter the courtroom to testify, one of government witnesses made some brief comment to that witness.

At this informal discussion between court and counsel concerning such incident, and based upon the alleged comment made, it was agreed by all of

counsel that the incident was entirely harmless, and that the testimony of the witness approached was in no manner influenced thereby. On the basis of the discussion this Court was of the same opinion.

This incident has been reported in the local papers, and, no doubt, been widely read. To lay persons it may appear that some sinister motive is involved, that justice is somehow [11] being thwarted, and the integrity of the Court impeached.

Let me point out that both the government and each of the defendants is represented by able counsel. They are here to serve the interest of their respective clients. They know the law and legal procedure and are competent to protect their respective clients. This they may now do by addressing any motion to the Court.

[Endorsed]: Filed October 18, 1957. [12]

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[Title of District Court and Cause.]

### ORDER EXTENDING TIME

On this day the defendants above named, William Cecil Pool and Edward Ellis Clifton, appeared in chambers in propria personam and orally moved the Court for an extension of time in which to file their respective motions for a new trial as specified in Rule 33, Federal Rules of Criminal Procedure.



There was present the Clerk of this Court and Franklin P. Rittenhouse, United States Attorney; and it appearing from the statements made by the defendant, William Cecil Pool, that neither of two counsel who represented him during the trial of the matter, which terminated in a verdict of guilty against each defendant, were present within the city of Las Vegas, Carlos G. Watson having returned to the State of Texas following the termination of the trial by the return of the verdict of guilty on October 17, 1957, and Calvin Magleby, associate counsel, being also presently out of the city of Las Vegas; and it appearing that as to the defendant, Edward Ellis Clifton, a misunderstanding has arisen between himself and counsel as to the filing of a motion for new trial; and it further appearing that this is the last day upon [28] which defendants can make and file their motions for a new trial under the situations contemplated in the last sentence of said Rule 33; and it appearing in the interest of justice that the defendants were and are entitled to further time in which to make their respective motions under Rule 33 and particularly under the last sentence of said Rule 33; now therefore, and good cause appearing, it is

Ordered, that the defendants above named, and each of them, are hereby granted to and including the 29th day of October, 1957, in which to make their motions for a new trial, and the five day period specified in the last sentence of said Rule 33 is extended to said 29th day of October, 1957.

Dated at Las Vegas, Nevada, this 22nd day of October, 1957.

/s/ JOHN R. ROSS,  
United States District Judge.

[Endorsed]: Filed October 22, 1957. [29]

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[Title of District Court and Cause.]

AFFIDAVITS OF CHARLES L. MARTIN,  
WILLIAM R. HENDERSON, RAMONA  
WOLF AND VICTOR L. CARLSON IN OP-  
POSITION TO DEFENDANT WILLIAM  
CECIL POOL'S MOTION FOR NEW  
TRIAL

Comes Now the plaintiff, United States of America, and files in the above-entitled matter, affidavits of Charles L. Martin, William R. Henderson, Ramona Wolf and Victor L. Carlson, hereto attached, in opposition to Defendant William Cecil Pool's Motion for New Trial.

FRANKLIN RITTENHOUSE,  
United States Attorney.

By /s/ HOWARD W. BABCOCK,  
Assistant United States Attorney, Attorneys for  
Plaintiff, United States of America. [35]

[Title of District Court and Cause.]

### AFFIDAVIT

United States of America,  
District of Nevada—ss.

Charles L. Martin, being first duly sworn, deposes and says:

That I reside at 600 South Fourth Street, Las Vegas, Nevada; that I was a juror in the above-entitled case and was thereafter selected as foreman of said jury.

That on October 17, 1957, shortly after the jury was discharged by the Court, I was leaving the Federal Court Building by proceeding down the staircase. As I approached the staircase I observed Herman M. Greenspun, defendant William Cecil Pool and his attorney at the head of the stairway. I heard Herman M. Greenspun excuse himself from the persons aforesaid, and said Greenspun then engaged me in conversation as I proceeded down the stairway. We went out of the building and had a conversation on the outside steps of the Post Office Building covering a period of two to three minutes.

H. M. Greenspun said he wanted to know what happened to enable the jury to reach a verdict as fast as it did. [36] He also mentioned he didn't hear the proceedings because he expected to be called as a character witness for defendant Pool.

I replied to the effect that anything I said would be off the record, that is to say, that I was not



speaking for the jury, nor was anything to be a matter of news publication. H. M. Greenspun replied by saying, "all right, the trial is over, you can say what you feel like saying."

I told him in effect "that with the evidence presented to the jury, we had no choice but to render the verdict we did. There was no argument in the juryroom whatsoever, and that had the same evidence been presented against my own brother I would have to vote as I did."

H. M. Greenspun then inquired "if Pool's attorney had let him down." I replied "that I knew nothing about that; that all we (jury) went on was the evidence presented to us and the instructions of the Judge."

I have read the affidavit of H. M. Greenspun filed October 29, 1957. With positiveness, I swear and affirm that I did not make the remark as stated by him that "These cops who disregard the rights of others and use brutality have to be taught a lesson."

While it is true that my son was arrested in Arizona as referred to in H. M. Greenspun's affidavit, I have searched my mind and do not recall the subject of my son's arrest being mentioned in the course of our brief conversation. Again, with positiveness, I swear and affirm that I did not say to him that this was in my mind at the time of our deliberations.

I further assert that at no time during the trial and deliberations was I prejudiced for or against defendants Pool [37] and Clifton.

I say nothing further, except that this affidavit is made and presented to this Court in response and answer to the affidavit made and filed by Herman M. Greenspun.

/s/ CHARLES L. MARTIN.

Subscribed and sworn to before me this 7th day of November, 1957.

[Seal]                      OLIVER F. PRATT,  
Clerk;

By /s/ FRANCES PETTINGIEL,  
Deputy. [38]

[Title of District Court and Cause.]

### AFFIDAVIT

United States of America,  
District of Nevada—ss.

William R. Henderson, being first duly sworn, deposes and says:

I reside at 229 East Circle Drive, Las Vegas, Nevada; I am the owner and operator of Bill's Cafe, 4231 North Main Street (Salt Lake Highway 91), Clark County, Nevada.

On October 18 and 19, 1957, from 6:30 p.m. to approximately 4:00 a.m., I was working at my cafe aforesaid and was on the premises continuously during that period of time.

About 7:30 p.m., October 18, 1957, Ray Lewis Sage, Jr., and Donald K. Clopton (a former airman now residing in the State of Florida) came into my cafe together. They both ordered a glass of 10 oz. draft beer, and shortly thereafter Sage ordered a sandwich.

About 8:00 p.m., October 18, 1957, Al Ferguson and Donald Miller (an airman on duty at Nellis Air Force Base) came into the cafe. Ferguson took a seat at the bar next to Sage. Miller sat to the left of Ferguson and Clopton on the right of Sage. [39]

I was behind the bar serving the above-mentioned persons and other guests. I was within hearing distance of Sage, Ferguson, Miller and Clopton and heard their entire conversation.

Ferguson offered Sage a drink, which Sage refused. Ferguson then asked Sage "if he needed anything to sleep these nights." Sage answered, "No, nothing's bothering me." Miller and Ferguson engaged in a general conversation and on occasion talked to me. Ferguson then turned to Sage and said, "Say, Sage, tell me something on the level. I want to hear the truth. Did Pool actually beat you or was it Clifton or the other fellow? Ray Sage answered, "All of them were mixed up in it, but Pool didn't beat me so much as the other fellows. He (Pool) was the one that kicked me after the other fellows had worked me over."

At about that time Ferguson got off his bar stool and said, "Hell, let's have another drink." He kept looking at Sage all the time but never said another

word to him. Sage did not have another beer at that time. I was kidding Sage about not having a free drink and Ferguson then said, "He'd better lay off that stuff; he'll be seeing pink elephants and other things next." Shortly after that remark, Ferguson and Miller left the premises after being there about one (1) hour.

Sage and Clopton were on the premises two (2) to three (3) hours. During that period of time Sage had no more than four (4) beers and a sandwich.

I have read the affidavit of Donald Miller, filed October 29, 1957. I swear and affirm that at no time during the course of the conversation of the persons named above did Ray Sage, Jr., say "that William C. Pool did not beat him (Sage) and that Edward E. Clifton and Victor L. Carlson [40] were the ones that administered the beating," nor "that William C. Pool was not even present at the time the beatings were administered."

I say nothing further, except that this affidavit is made and presented to this Court in response and answer to the affidavit made and filed by Donald I. Miller.

/s/ WILLIAM R. HENDERSON.

Subscribed and sworn to before me this 13th day of November, 1957.

[Seal]

OLIVER F. PRATT,  
Clerk;

By /s/ FRANCES PETTINGIEL,  
Deputy. [41]

[Title of District Court and Cause.]

**AFFIDAVIT**

State of Minnesota,  
County of Becker—ss.

Ramona Wolf, being first duly sworn, deposes and says:

I reside at 214 West Holmes, Detroit Lakes, Minnesota. I was a witness, called by the plaintiff, in the trial of the above-entitled case.

As a witness excluded from the courtroom I was in and about the corridor just outside the courtroom. On the first day of the trial, October 14, 1957, I had occasion to sit next to and have a conversation with Victor L. Carlson. I also spoke to him on occasion during the course of the first day of trial.

Our conversation, for the most part, was an exchange of courteous pleasantries such as our respective employments, the cold weather in Minnesota, my baby, et cetera. Concerning the matter of this case, Mr. Carlson said in effect, "I'm going to give the truth right straight down the line, and Bill knows it's the truth." He also remarked in effect [42] that "it's a good thing, Ramona, you left when you did. It was almost unbearable to live in North Las Vegas. Can you imagine that he even picked me up for violation of the Rooming House Ordinance, and Evelyn and I have been married for some time."

At no time did Victor L. Carlson say to me that "he was not testifying to the truth" or that "he



testified in the manner he did for the reason he was going to get revenge against William C. Pool," or that "he was going to get even with him."

Victor L. Carlson also said to me on that day something to the effect that "I know I was wrong. I have a conscience. I was there when these boys were beaten. I couldn't sleep nights. The only way I could clear my conscience was to talk to someone and tell the truth."

In my own mind I know that Mr. Carlson did not try to get revenge.

Also during the course of the trial Defendant William Pool and I had a conversation about the baby and our own personal affairs. During that conversation William Pool asked me, "Is Vic trying to get revenge?"

I answered him as follows: "No, Bill, he is not; he wants to tell the truth to clear his own conscience."

I say nothing further, except that this affidavit is made and presented to this Court in response and answer to the affidavit made and filed by Margaret Simpson.

/s/ RAMONA WOLF.

Subscribed and sworn to before me this 11th day of November, 1957.

[Seal] /s/ [Indistinguishable.]

Notary Public in and for the County of Becker,  
State of Minnesota.

My commission expires March 9th, 1962. [43]

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,  
District of Nevada—ss.

Victor L. Carlson, being first duly sworn, deposes and says:

I reside in North Las Vegas, Nevada. I was a witness, called by the plaintiff, in the trial of the above-entitled case.

On the first day of the trial, October 14, 1957, I had occasion to be seated next to Ramona Wolf in the corridor just outside the courtroom. At that time and on brief occasions during that day we engaged in conversation.

As recited in the affidavit of Ramona Wolf our conversation, for the most part, was an exchange of courteous pleasantries. I do recall telling her that I was going to testify to the truth straight down the line. I also mentioned to her that my conscience had bothered me, that I couldn't sleep nights because of the whole affair, and that the only way I could clear my conscience was to tell the truth. I also told her about my arrest in North Las Vegas for an alleged violation of the Rooming House Ordinance.

I have read the affidavit of Margaret Simpson, a person unknown to me. At no time did I say to Ramona Wolf [44] nor to anyone that I testified in the manner I did for the reason that I was going to

wilfully subjects one to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

4. Concise Statement of Judgment or Order Giving Date and Any Sentence:

The judgment was entered on October 17, 1957, after a jury verdict of guilty. The Court imposed sentence on November 1, 1957, for a period of one year.

On October 22, 1957, the District Court entered an order extending until October 29, 1957, the time for appellant to file a motion for new trial. On October 29, 1957, appellant filed a motion for new trial. On November 18, 1957, the District Court entered an order denying the motion for new [71] trial.

5. Name of institution where appellant is now confined if not on bail:

I, the above-named appellant hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment and the order denying a motion for the new trial.

Dated: November 18, 1957.

/s/ MORTON GALANE,  
Attorney for Appellant.

[Endorsed]: Filed November 18, 1957. [72]



In the United States District Court,  
for the District of Nevada

No. Cr. 136

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM CECIL POOL and EDWARD ELLIS  
CLIFTON,

Defendants.

Before: Hon. John R. Ross, Judge.

### JURY TRIAL

Be It Remembered, that the above-entitled matter came on for trial before the Court, sitting with a jury, at Las Vegas, Nevada, on Monday, the 14th of October, 1947, at the hour of ten o'clock a.m.

#### Appearances:

FRANKLIN P. RITTENHOUSE, ESQ.,  
HOWARD W. BABCOCK, ESQ.,

Attorneys for Plaintiff.

CARLOS G. WATSON, ESQ., and  
CALVIN C. MAGLEBY, ESQ.,

Attorneys for Defendant Pool.

M. G. MATTEUCCI, ESQ.,

Attorney for Defendant Clifton.

The following proceedings were had:

## ROBERT M. NELSON

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Babcock:

Q. Will you state your name?

A. Robert M. Nelson. [1]

Q. You have previously been sworn, have you not?

A. Yes, sir.

Q. Where do you reside?

A. 2101 College, North Las Vegas.

Q. What is your occupation?

A. City Clerk, City of North Las Vegas.

Q. How long have you held that position?

A. Three years.

Q. Did you bring with you, pursuant to a subpoena duces tecum served upon you, certain records of the City of North Las Vegas, relating to the appointment of William Cecil Pool to office in that city?

A. Yes, sir.

Q. Do you have that record with you?

A. Yes, sir; at a special meeting.

Q. Just one moment. What record did you bring?

A. These are the minutes.

Q. Minutes of what?

A. Council meeting.

Q. Of the City of North Las Vegas?

A. Yes.

Q. Were you charged with the custody of that particular minute book which you have before you?

A. Yes, sir.

(Testimony of Robert M. Nelson.)

Q. As city clerk of that city, is that correct? [2\*]

A. That is right.

Q. Do your minutes reflect an appointment of William Cecil Pool to an office in the North Las Vegas Police Department? A. They do.

Q. Can you identify the page number of the exhibit?

A. The page number of the minute book is 417.

Q. Is it possible that those pages can be removed for return, or is that a permanently bound volume? A. They can be taken out.

Q. Would you please remove those two pages?

A. Yes, sir.

Q. Mr. Nelson, I hand you plaintiff's Exhibit No. 1 for identification and I will ask you to identify this proposed exhibit.

A. This is two pages, pages 416 and 417, from the minute book No. 1 of the City of North Las Vegas, Nevada, which accounts for the special meeting of the city council, in which a chief of police was appointed to that position.

Q. And this is an official document of the City of North Las Vegas? A. It is.

The Court: What was the date of that meeting, counsel?

Mr. Babcock: August 29, 1955. I offer into evidence, your Honor, the exhibit as identified, plaintiff's No. 1 for identification.

Mr. Watson: No objection on behalf of defendant Pool.

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Robert M. Nelson.)

Mr. Matteucci: No objection. [3]

The Court: There being no objections by counsel for the two defendants, the exhibit is received in evidence as government's No. 1.

Q. Handing you Plaintiff's Exhibit No. 1, Mr. Nelson, will you state what was had by way of minutes of regular meeting September 6, 1955, by the City of North Las Vegas?

A. Did you say referring to September 6th?

Q. Referring to the exhibit just handed you, what was accomplished at that special meeting?

A. The City Council appointed William C. Pool chief of Police. The motion of the council was made by Councilman Ferguson that William C. Pool be appointed and Councilman Evans seconded the motion. The motion carried.

Q. What was the date of that meeting?

A. The date of that meeting, sir, August 29, 1955.

Q. Do you have with you, Mr. Nelson, any official records of the City of North Las Vegas, relating to the termination of the employment of Mr. Pool as chief of police of that city?

A. Yes, I do. I have a record of the termination in the minute book No. 2, pages 13 and 14.

Q. Would you remove that page, Mr. Nelson, please. Mr. Nelson, I hand you Plaintiff's Exhibit No. 2, consisting of two separate sheets, bearing numbers 13, 14, 15 and 16, and ask you if you can identify this proposed exhibit?

A. Yes, sir, I can. [4]

(Testimony of Robert M. Nelson.)

Q. What is it?

A. These are pages from the minutes of minute book No. 2, covering the minutes of regular council meeting held September 4, 1956.

Q. Is that an official document of the City of North Las Vegas?      A. That is right.

Q. And maintained by you as city clerk of that city?      A. Yes, sir.

Q. And in your custody?      A. Yes, sir.

Mr. Babcock: I offer into evidence Plaintiff's Exhibit 2 for identification.

Mr. Watson: If the Court please, do I understand counsel is now offering this exhibit for admission?

Mr. Babcock: Yes.

Mr. Watson: I object to the acceptance of this exhibit because it is apparently offered merely to prove the time in question at all times pertaining to this case Mr. Pool was chief of police of the City of North Las Vegas, Nevada, which we will be glad to stipulate. However, the matter here contained goes far beyond that and goes into a number of facts which might tend unfairly to prejudice this defendant, Mr. Pool, and which have no independent relevancy to the issues in this case.

The Court: You say counsel, you will stipulate this [5] defendant, Pool, at all times relating to material, to the charges contained in the indictment on file herein, was a regular and duly appointed and acting police officer of the City of North Las Vegas?

Mr. Watson: Yes, your Honor.



(Testimony of Robert M. Nelson.)

Mr. Babcock: I will accept the stipulation, your Honor. I think for the record, however——

The Court: Of course the Court can't pass upon the objection made by counsel to Exhibit 2 for identification until the Court has looked at it. If there is some objectionable matter in there, it certainly should not be permitted to be introduced.

Mr. Babcock: In view of the proposed stipulation, I will withdraw the offer, offer it so it may show the actual date of termination.

The Court: Get together and stipulate that.

Mr. Watson: Whatever the actual date of termination I will be glad to stipulate. I believe it is September 4, 1956.

The Court: Let the record show it is stipulated between counsel that as of September 4, 1956, the official position of the Defendant Pool as acting North Las Vegas police officer was terminated by the City of North Las Vegas. Your offer to [6] introduce into Exhibit 2 is withdrawn?

Mr. Babcock: Yes, your Honor, with the understanding that the stipulation recited by your Honor that the amendment can be made a matter of record.

Q. Mr. Nelson, did you bring with you any official records which reflect the employment of Edward Ellis Clifton with the City of North Las Vegas? A. Yes, sir.

Q. Mr. Nelson, I hand you Plaintiff's Exhibit 3 for identification and ask you to identify the proposed exhibit.



(Testimony of Robert M. Nelson.)

A. This is an oath of office which was sworn to before me by Edward Ellis Clifton when he became a member of the Police Department of the City of North Las Vegas. It is signed by Edward Clifton, subscribed and sworn to before me the 27th day of October, 1955.

Q. Is that an official record of the City of North Las Vegas?      A. Yes.

Q. Where is that record maintained?

A. At the North Las Vegas city hall.

Q. And you have custody of that record, together with other official records of the City of North Las Vegas, is that right?      A. Yes, sir.

Mr. Babcock: I offer into evidence, your Honor, Plaintiff's Exhibit 3 for identification.

The Court: Any objection? [7]

Mr. Matteucci: No objection, your Honor.

The Court: There being no objections, the offer is received in evidence as Plaintiff's Exhibit 3, being oath of office of the Defendant Clifton as an officer of the City of North Las Vegas.

Q. I hand you plaintiff's Exhibit 4 for identification, Mr. Nelson, and ask if you can identify that document?

A. This is a payroll record of Edward Ellis Clifton, police officer. It shows the date he terminated, 1956; it does not show the exact date, but approximately between the 1st and 15th of March, 1956. This last entry——

Q. Don't testify from the entry as yet. May I ask if this is an official record, kept in the ordinary

(Testimony of Robert M. Nelson.)

course of business of the affairs of the City of North Las Vegas?

A. Yes.

Q. Where is that record maintained and kept?

A. City hall of North Las Vegas.

Mr. Babcock: We offer into evidence Plaintiff's Exhibit 4 for identification.

Mr. Matteucci: No objection.

The Court: The offer will be received in evidence as Government's Exhibit 4, being official record, payroll record, and the exhibit being offered for the purpose of showing the approximate termination date of the employment of the Defendant Clifton [8] as a police officer of the City of North Las Vegas.

Q. I hand you again Plaintiff's Exhibit 4 in evidence, Mr. Nelson. I will ask you what is the date as recorded in that record of the termination of employment of the Defendant Clifton?

A. The date shown is March 15, 1956, and that is the payroll date.

Q. Mr. Nelson, do you have personal knowledge if Edward Ellis Clifton was an acting police officer with the North Las Vegas Police Department from October 27, 1955, to March 15, 1956?

A. Yes, sir.

Q. And what was his office in the police department, if you know?

A. His position when he terminated was rank of captain, sir. When he was first employed, he was employed as a policeman, when he was first em-

(Testimony of Robert M. Nelson.)

ployed. During that time he was elevated to the rank of captain.

Q. Does the record show continuous employment during the dates referred to? A. Yes, sir.

Mr. Babcock: You may inquire.

Mr. Watson: No questions.

### Cross-Examination

By Mr. Matteucci:

Q. Mr. Nelson, do you know, of your own knowledge, when Mr. [9] Clifton became captain of the North Las Vegas police department?

A. May I see that record? Mr. Clifton became captain on January 4, 1956.

Mr. Matteucci: That's all, your Honor.

Witness permanently excused.

Mr. Babcock: In view of the fact these documents offered by the government are official records, the government requests the right to substitute, in lieu of the originals, photostatic copies thereof.

Mr. Watson: No objection.

Mr. Matteucci: No objection.

The Court: So ordered.

## ARTHUR DAVIDSON

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Babcock:

Q. Will you state your name, please?

A. Arthur Davidson.

Q. Where do you reside, Mr. Davidson?

A. 2533 Spear Street, North Las Vegas.

Q. What is your occupation?

A. Police officer, City of North Las Vegas.

Q. In what position at the present time?

A. Lieutenant.

Q. What are your duties? [10]

A. I am in charge of the Detective Bureau.

Q. As such, do you have custody and control of the booking sheet records of the North Las Vegas police department?

A. Yes, sir.

Q. You were requested by subpoena to bring to court the booking sheets for Ray Louis Sage, Jr., and Coit Morton Gaither, Jr. Do you have those booking records with you?

A. I do, sir.

Q. Mr. Davidson, I hand you Plaintiff's Exhibit 5 for identification. I will ask you if you can identify this proposed exhibit?

A. Yes, sir. It is a booking report, booking sheet, of the police filed of North Las Vegas.

Q. Relating to whom?

A. Ray Louis Sage, Jr.

Q. What is the date of that booking sheet?

(Testimony of Arthur Davidson.)

A. 2-27-56, 9:05 p.m.

Q. Is there an official record of the police department of North Las Vegas? A. Yes, sir.

Q. And is that record kept in the ordinary course of the affairs of the North Las Vegas police department? A. Yes, sir.

Mr. Babcock: I offer into evidence Plaintiff's Exhibit 5 for identification. [11]

Mr. Watson: No objection.

Mr. Matteucci: I have no objection.

The Court: There being no objection on the part of counsel for either defendant, the offer is received in evidence as Government's Exhibit 5, being the booking report dated 2-27-56, as relates to the Prisoner Sage.

Q. Mr. Davidson, I hand you Plaintiff's Exhibit 6 for identification and ask you if you can identify that proposed exhibit?

A. I can, sir. This is also a booking report of the police files of the City of North Las Vegas.

Q. An official record maintained in the ordinary course of the business of the police department?

A. Yes.

Q. To whom does this relate?

A. Coite Morton Gaither.

Q. What is the date of the booking?

A. 2-27-56, 4:30 p.m.

Mr. Babcock: I offer into evidence Plaintiff's Exhibit 6 for identification.

Mr. Watson: No objection, your Honor.

Mr. Matteucci: No objection.



(Testimony of Arthur Davidson.)

The Court: There being no objections, the offer is received in evidence as Government's Exhibit 6, being booking report with reference to Coite [12] Morton Gaither, dated 2-27-56.

Q. Showing you next Exhibit 5 in evidence, booking report relating to Sage, I will ask you what the booking report reports as to date and time of his arrest by the North Las Vegas police department?

A. The only date on the book is 2-27-56 at 5 p.m.

Q. And handing you Plaintiff's Exhibit 6 in evidence, booking report of Coite Gaither, I will ask you the date and time of the arrest as reflected on that exhibit.

A. Gaither, 2-27-56 at 4:30 p.m.

Q. And as it relates to Ray Louis Sage, what was the charge at the time of arrest?

A. Charge on Ray Sage was burglary investigation.

Q. And what was the charge as reflected on the booking report of Coite Gaither?

A. Gaither was vagrancy and burglary investigation.

Mr. Babcock: You may inquire.



(Testimony of Arthur Davidson.)

Cross-Examination

By Mr. Watson:

Q. Lieutenant Davidson, did you also bring with you the logs for the activities for North Las Vegas police department on that date, showing radio calls in and out and any other business transacted?

A. I did not. I brought everything except the radio log.

Q. And they are in your charge?

A. Yes, sir. [13]

Q. You did not bring them with you?

A. No, sir.

Mr. Watson: If the Court please, Mr. Pool feels that Lt. Davidson should be subpoenaed on behalf of the Defendant Pool, to appear in court tomorrow with the radio logs, which are part of the official records of the North Las Vegas police department.

Mr. Babcock: I suggest counsel issue the subpoena.

The Court: That is the usual way. There is nothing to prevent your doing that. Your motion is, however, proper. You can issue subpoena, and if you have any other records you desire, designate them properly in the subpoena.

Mr. Watson: Thank you. No further questions.

(Testimony of Arthur Davidson.)

Cross-Examination

By Mr. Matteucci:

Q. Mr. Davidson, I hand you Plaintiff's Exhibit 5 and ask you if you can tell the members of the jury what the court disposition was regarding Ray L. Sage, Jr.

A. The court disposition was one to fifteen years.

Q. I hand you Plaintiff's Exhibit 6 and ask you if you can tell the ladies and gentlemen of the jury what the court disposition was for Coite Gaither?

A. According to this, it was one to fifteen years; merely says one to fifteen years. The report is not dated.

Q. That is in both cases? [14]

A. Both cases.

Mr. Babcock: No further questions.

Witness excused.

RAY L. SAGE, JR.

a witness on behalf of the plaintiff being duly sworn, testified as follows:

Direct Examination

By Mr. Babcock:

Q. Will you state your name?

A. Ray L. Sage, Jr.

Q. You have been previously sworn?

(Testimony of Ray L. Sage, Jr.)

A. Yes, sir.

Q. Where do you make your home?

A. West Virginia.

Q. What city? A. Marlinton.

Q. On February 27, 1956, where was your permanent residence?

A. Nellis Air Force Base, Las Vegas, Nevada.

Q. As a member of what?

A. Thirty-fifth Airman Training Squad.

Q. Were you an airman with the United States Air Forces at that time? A. Yes, sir.

Q. What was your permanent address, residence address, on February 27, 1956?

A. Same place, Marlinton, West Virginia.

Q. And you are a citizen of what country? [15]

A. United States.

Q. On or about February 27, 1956, Mr. Sage, were you taken into custody by certain personnel of the North Las Vegas police department?

A. Yes, sir.

Q. When were you first taken into custody, what time of day?

A. It was in the morning, around nine o'clock.

Q. Where were you at that time?

A. I was at Grande Court.

Q. Is that a motel lodging? A. Yes, sir.

Q. What happened on that morning?

A. The policeman came in and woke me up in bed.

Q. What policeman do you refer to?

(Testimony of Ray L. Sage, Jr.)

A. Detective Carlson was one and another policeman I don't know.

Q. How were they dressed?

A. Detective Carlson had on civilian clothes and the policeman was dressed in uniform of Las Vegas police department.

Q. What happened after you were awakened?

A. They told me I must go to the police station, so they took me out to the car and took me to the police station and a guy there named Jerry Fritzel, they took him, too.

Q. Jerry Fritzel was in the motel room with you?

A. Yes, sir. [16]

Q. And these police officers took you both at that time, is that a fact?

A. Yes, sir.

Q. Who drove you to the police station?

A. Detective Carlson.

Q. What time did you arrive at the police station?

A. Oh, about fifteen minutes later.

Q. And what happened after you arrived at the police station, at the North Las Vegas police department?

A. I sat there quite awhile.

Q. Where?

A. In the police station, North Las Vegas, and they never asked me any questions for quite awhile.

Q. For quite awhile, how long was that, would you say?

A. I would say about half an hour.

Q. Were you seated alone?

A. Yes, sir.

Q. You had no conversation?

A. No, sir.

Q. Then after that wait, what happened?

(Testimony of Ray L. Sage, Jr.)

A. Then they started to ask me questions about the burglary.

Q. Who started to ask you questions?

A. Pool and Carlson.

Q. Where did this interrogation take place?

A. It was in the same place, North Las Vegas police station. [17]

Q. Do you remember if the room was given a special name?           A. Not that I know of.

Q. How long did this interrogation take place?

A. About fifteen minutes.

Q. During that fifteen minutes who was present?

A. Same people, you know, Carlson, Pool and Clifton.

Q. What questions did they ask of you?

A. About the burglary; about people I knew around here.

Q. Did they identify any particular burglary?

A. Yes, sir.

Q. More than one?           A. Yes, sir.

Q. What did you say during that period of interrogation?

A. I told them I didn't know what they was talking about.

Q. Then what happened after that fifteen minutes of interrogation?

A. They took me in a room where they had a radio for car calls and I was in there awhile, an hour and a half. While I was sitting in the office they put me in another room, Coite Gaither and I.

Q. Were you placed under arrest at that time?



(Testimony of Ray L. Sage, Jr.)

A. Not that I know of.

Q. What happened in the radio room?

A. I just sat there, waited.

Q. Were you interrogated by any one? [18]

A. No, sir; not in there.

Q. Did you have a conversation with any one at that time?

A. Maybe an officer, that's about all.

Q. How long did you remain in the radio room?

A. I believe about an hour and a half, around an hour.

Q. Were you interrogated by any one during that period of time while in the radio room?

A. No, sir.

Q. Then what next happened?

A. Then they took me out to the car.

Q. Who took you out to the car?

A. I think it was Capt. Clifton, I am not sure.

Q. Whoever it was, did a police officer escort you? A. Yes, sir.

Q. Where was the car parked that you speak of?

A. In front of the North Las Vegas police department.

Q. What kind of car was it? A. Ford.

Q. Did it have any markings on it?

A. No, sir.

Q. How was Captain Clifton dressed at that time when you observed him at the police station on that date? A. I think it was a brown suit.

Q. What did you do, or what was done, when you got out to the car? [19]



(Testimony of Ray L. Sage, Jr.)

A. They asked me if I took a ride with Coite Gaither the morning of the 27th and I said no.

Q. Who asked that, if you remember.

A. Pool.

Q. How was Mr. Pool dressed?

A. He was in a suit, I don't know which color.

Q. Can you identify at this time Mr. Pool?

A. Yes, sir.

Q. Is he in this courtroom? A. Yes, sir.

Q. Would you point him out?

A. That man sitting at the table.

Q. Can you identify at this time Edward Ellis Clifton? A. Yes, sir.

Q. Is he in this courtroom? A. Yes, sir.

Q. Is he seated at the table? A. Yes, sir.

Q. Would you point him out?

A. Sitting there on the right side.

Q. Between counsel? A. Yes, sir.

Q. At the time you had this conversation about the ride with Coite Gaither on the morning of the 27th, were you in the car or outside the car? [20]

A. Inside the car.

Q. Where were you seated?

A. In the back seat.

Q. On what side, if you recall?

A. Left-hand side.

Q. Who else was in the car?

A. Detective Carlson, Chief Pool.

Q. Where was Detective Carlson seated?

A. Seated on the driver's side.

Q. Where was Mr. Pool?

(Testimony of Ray L. Sage, Jr.)

A. Mr. Pool was in the back seat with me.

Q. Was any one else in the car?

A. Clifton.

Q. Where was he seated?

A. He was up in the front seat.

Q. At that time and before you left, if you did in fact leave, did you have a conversation with the three officers you testified about?

A. There was a conversation.

Q. Then what happened?

A. Then he brought Coite Gaither out to the car and they asked him some questions.

Q. In your presence? A. Yes, sir.

Q. Who asked him, if you recall? [21]

A. I can't recall.

Q. One of the three officers? A. Yes.

Q. What was said?

A. They asked Coite Gaither had he taken a ride that morning and he said both of us had taken a ride together and Gaither said, "Yes, don't you remember that guy we took up to the Western Union," and they said that is all they wanted to hear.

Q. Then what happened.

A. Then they backed the car out.

Q. What happened to Gaither?

A. They took him. I never noticed where they took him.

Q. What next happened after Gaither left?

A. They backed the car up and started toward Nellis Air Force Base and told me to get down on the floor boards in the back seat.

(Testimony of Ray L. Sage, Jr.)

Q. When did they tell you to get down on the floor boards?

A. After we pulled out of the police station.

Q. Who told you to do that?

A. Chief Pool.

Q. Then what happened?

A. They took me out towards Nellis Air Force Base and turned off onto a dirt road.

Q. About how far do you believe you travelled on the road going to the Nellis Air Force Base? [22]

The Court: Can you ladies and gentlemen hear? At any time you do not hear properly, just speak up.

Juror: Not too clearly.

(Witness admonished to speak up.)

Q. About how far would you estimate it to be?

A. I can't say exactly. I was just laying there. I know just about how far it is—just laying there, I couldn't tell—about three or four miles.

Q. And during that three or four miles, what was your position in the car?

A. I was still on the floor board.

Q. Were you handcuffed at that time?

A. No, sir.

Q. And then your testimony is that the car turned into a dirt road?

A. Yes, sir.

Q. Then what happened?

A. Then we proceeded by this dirt road and they turned off and I do remember them getting out of the car and talking and they hadn't taken me out of the car yet and they said—I caught a couple of words—they said, "We had better go some place

(Testimony of Ray L. Sage, Jr.)

else," so they got back in the car and went on up this dirt road and they stopped and I got out, side of a small gulley, and as I started to get out, Captain Clifton, he hit me in the mouth with what I thought was his elbow and he proceeded to beat me with [23] his flashlight.

Q. Going back, Mr. Sage, after you turned off onto this road off the highway, how far did you travel, to the best of your approximation?

A. I guess around two or three miles.

Q. And if I understand your testimony correctly, you made a turn and came to a halt?

A. Yes, sir.

Q. How long were you at that particular location? A. I would say about five minutes.

Q. What, if anything, happened at that spot?

A. They got out and they were talking between themselves, off from the car a small piece, and they talked about five minutes and they said they better go some place else.

Q. At the time you said they were talking among themselves, where was the car located, if you know?

A. I don't know. I was still on the floor.

Q. And then after this five-minute stop, you were still in the car and on the floor board, is that correct? A. Yes.

Q. And then you drove to another location, is that correct? A. Yes.

Q. And how far did you drive from that first stop to the second location?

A. I can't say as to that. [24]

(Testimony of Ray L. Sage, Jr.)

Q. A matter of a few minutes?

A. Yes, sir.

Q. Were you on the floor board during that transportation?

A. Yes, sir.

Q. After you arrived at this second location, did you leave the car?

A. Yes.

Q. Who propelled you out of the car, if any one?

A. Captain Clifton.

Q. Do you recall what he said?

A. No, sir.

Q. And then where did you go after you got out of the car?

A. No place. They started beating me.

Q. Where were you at the time they started beating you?

A. I was side of the gulley.

Q. That is what I am asking, how far from the car was this gulley? About how far did you have to walk?

A. I would say about twenty feet, thirty.

Q. And after you came to the gulley, who was present with you?

A. I never went to the gulley yet. I was getting a beating when I got out of the car. I didn't get out and walk to the gulley.

Q. Where were you at the time you first were being beaten?

A. Beside the car. [25]

Q. Do you recall on what side?

A. The right-hand side of the car.

Q. What happened? Who struck you, if any one?

A. Captain Clifton struck me first.

Q. Did you see what he struck you with?



(Testimony of Ray L. Sage, Jr.)

A. I thought it was his elbow or fist, I wasn't looking at him.

Q. Then what next happened?

A. Then he started beating me with the back of his flashlight.

Q. Who did that?

A. Captain Clifton. He held the flashlight.

Q. While you were still against the car?

A. No, sir; I was not.

Q. Where were you then?

A. I was a couple of feet away from the car.

Q. Did any one else but Captain Clifton beat you with the flashlight?      A. No, sir.

Q. How big a flashlight was it?

A. Pretty good size, the way I looked at it.

Q. Did you observe what kind of a flashlight, what it had on it?

A. I couldn't say exactly. I know it was a silver handle, had silver on it and the head was black on it. I never saw him when he hit me. [26]

Q. Where were you hit with the flashlight?

A. In the chest, abdomen.

Q. How many times, if you know?

A. I don't know how many times.

Q. Can you give us an approximation?

A. I would say around twenty-five or a hundred.

Q. What effect did this have upon you physically?

Q. Well, I kept falling on the ground every time he did it.



(Testimony of Ray L. Sage, Jr.)

Q. How many times, while being administered with this flashlight, did you fall to the ground?

A. I couldn't say.

Q. Can you give an approximation?

A. No, sir; approximately twenty times.

Q. How would you get up off the ground?

A. I just picked myself up off the ground.

Q. After you were administered the beating by the flashlight, what next happened?

A. Then they took me down to this gulley to a couch.

Q. Who took you down to the gulley?

A. Chief Pool.

Q. Alone?

A. Mr. Carlson, he was standing there. He was in the car seat. I got in this gulley——

Q. How far was this from the police car?

A. About thirty or forty feet. [27]

Q. Who escorted you down this gulley?

A. Chief Pool.

Q. What was done and said there?

A. He asked me if I was ready to tell him all that happened and I told him I didn't know a thing that happened, didn't know nothing about it.

Q. Nothing about what?

A. About the burglary.

Q. What burglary was that, do you recall?

A. Valley Market, Foodland Market.

Q. When Captain Clifton was using the flashlight on you, was there any conversation between you and Clifton?

(Testimony of Ray L. Sage, Jr.)

A. I didn't say nothing, no.

Q. What was Captain Clifton doing at that time?

A. At the time I was in the gulley?

Q. No; when he was using the flashlight.

A. He was beating me at that time.

Q. Was he saying anything to you?

A. "Are you ready to talk?" That is about the only thing he said.

Q. How often did he say that?

A. I don't know.

Q. When he asked you, "Are you ready to talk," what did he mean, did you know?

A. It was about the burglary. [28]

Q. Do you recall if Officer Carlson or Pool had any conversation at the time Clifton was hitting you with the flashlight?

A. No, sir; I can't.

Q. Then you were escorted down in the gulley to a couch with Officer Pool?

A. I think it was a car seat.

Q. Was it an abandoned car seat, is that it?

A. It didn't have a back on it.

Q. What happened when you got down to the car seat?

A. Chief Pool asked me if I was ready to tell him the truth and I told him no, I didn't know nothing about it, and then Captain Clifton, he ran down on the bank with a pistol in his hand and he said, "I am getting tired of this," and stuck it to my temple and he said, "You had better talk."

Q. Did you see the gun?

(Testimony of Ray L. Sage, Jr.)

A. Yes, sir; I saw the gun.

Q. Then what happened?

A. I told him that I didn't know nothing about it and so they took me back up to the car and put me back on the floor board of the back seat and handcuffed me, so they started to drive back to town.

Q. How long were you in the gulley?

A. I couldn't say, about fifteen or twenty minutes, I guess.

Q. And during that period of time did any one strike you?      A. No, sir. [29]

Q. During this period of time that you were being taken from the police department to this gulley and back again, did Officer Pool physically assault you?      A. Yes, sir.

Q. When was that?

A. That was at the time I was getting beat by Captain Clifton.

Q. What did Officer Pool do at that time?

A. Well, he used his feet when I went down there, he kicked me on the chest.

Q. How many times did that happen, if you recall?

A. It wasn't too many times. I wouldn't say over three or four times at the most.

Q. Was there any other time during this ride that Officer Pool physically assaulted you?

A. No, sir.

Q. After you had left the gulley, what did you do?

(Testimony of Ray L. Sage, Jr.)

A. They put me back on the floor boards of the back seat and handcuffed my hands.

Q. When were your hands handcuffed?

A. They were handcuffed during the beating.

Q. What beating?

A. When Captain Clifton was beating me with the flashlight.

Q. How were you handcuffed?

A. My hands behind me, my wrists.

Q. Who handcuffed you? [30]

A. I can't recall.

Q. One of the three officers?

A. Yes, sir.

Q. And were you handcuffed prior to the time Captain Clifton beat you with a flashlight?

A. No, sir.

Q. When were you handcuffed?

A. I was handcuffed about the middle of the beating.

Q. When you were handcuffed did you fall to the ground at any time during the beating?

A. Yes, sir.

Q. How were you able to get up?

A. Best way I could.

Q. How many blows were struck you while you were handcuffed with your hands behind you?

A. I couldn't tell.

Q. About how many?

A. Approximately, I would say, around thirty times; I am not sure.

Q. You said that Officer Pool kicked you where?

A. In my chest.

(Testimony of Ray L. Sage, Jr.)

Q. Some three or four times, is that your testimony?      A. Yes, sir.

Q. Did he ever do this while you were on the ground?

A. No, sir; not that I could see. [31]

Q. Did any one kick at you while you were on the ground, that you know or recall?

A. Well, I recall Captain Clifton jumping on top of me.

Q. How?      A. With his feet.

Q. Kicking you?

A. No, sir; I wouldn't say kicking me. I would just say stamping.

Q. Do you recall what part of your body?

A. Around the kidneys, around the lower part of my body and also on my stomach.

Q. After you came up from the gulley, you were returned to the car, is that correct?      A. Yes.

Q. May I ask, Mr. Sage, if you resisted any of the three officers from the time you left the police department to the time you were returned to the car from the gulley?      A. No, sir; not one.

Q. Did you attempt to escape?

A. No, sir.

Q. Did you attempt to fight?      A. No, sir.

Q. Did you have any argument with any of the officers?

A. No, sir. The only argument I had——

Mr. Matteucci: Objected to as self-serving statement. [32]

The Court: You may explain the answer. Ob-



(Testimony of Ray L. Sage, Jr.)

jection overruled. The question was, did you have an argument? The witness said no and said "the only argument I had" and was going to say something. I assume, counsel, you are referring to argument during this particular time?

Q. Yes, anything that was in the nature of an argument?

A. If you consider it an argument—they kept asking me if I was ready to tell the truth and I kept saying no, I didn't know nothing about it. That was all that was said.

The Court: When you answered "no," that is an indication that you wouldn't tell the truth, or that you didn't know anything about the situation. How about asking that question?

Q. You testified, as I understand, your only answer to the conversation was to the effect that you had no further information, is that right? They asked you if you wanted to talk?

A. Yes, sir; they asked me if I wanted to talk and I said, "No, sir; I never did nothing." That is all the argument.

Q. After you were then escorted back to the car from the gulley, how were you placed in the car?

A. On my back.

Q. Were you handcuffed at that time?

A. Yes, sir.

Q. And where was Officer Pool seated? [33]

A. He was seated in the back seat.

Q. Where was Officer Clifton seated?



(Testimony of Ray L. Sage, Jr.)

A. Officer Clifton was in the back seat—Pool, he was out in front.

Q. And Carlson, where was he seated?

A. He was driving.

Q. Then what happened after you got into the back seat of the car?

A. At the time I guess they went back to town and Captain Clifton, he still had the flashlight while I was lying down on my back, he punched my abdomen with the flashlight.

Q. Who did that? A. Captain Clifton.

Q. About how many times?

A. I don't know.

Q. Then where were you driven, if you know?

A. I was driven to North Las Vegas police station, behind it.

Q. Behind it? A. Yes, sir.

Q. When you returned to the rear of the police station, were you on your back at all times during that transportation? A. No, sir.

Q. When did you get up?

A. Before I came to North Las Vegas.

Q. Did they allow you to get up? [34]

A. Yes, sir.

Q. During that ride back, did any of the officers physically beat you?

A. Only when I first left, after I got in the car. After we come on the main road they didn't beat me.

Q. Did you have any conversation during your ride back with any of the officers?

(Testimony of Ray L. Sage, Jr.)

A. No, sir; not that I remember. It was merely talk, wasn't conversation.

Q. About how long would you say it was from the time you left the police department and your return to the police department?

A. Approximately, I believe, two or three hours, I would say. I couldn't say definitely.

Q. You think you were gone to this particular location on the road some two or three hours?

A. Yes, sir.

Q. Before you were returned? A. Yes, sir.

Q. When you arrived back to the police department, what happened there?

A. Chief Pool said, "Take him over to Henderson."

Q. Who was he directing that remark to?

A. To his officer.

Q. Do you know the name of the officer?

A. Yes, sir; Carlson and Captain Clifton. [35]

Q. Then what happened?

A. He went into the police station there and they pulled out and took me out to Henderson. Booked me out there.

Q. How were you seated at the time of that transportation?

A. I was sitting on the left-hand side of the back seat.

Q. Where was Officer Clifton?

A. On the right-hand side.

Q. Who was driving? A. Carlson.

(Testimony of Ray L. Sage, Jr.)

Q. Did anything happen on your trip over to Henderson?

A. Not physically; they never did nothing physically to me. He gave me a handkerchief to wipe the blood and sand.

Q. Did you have blood and sand on your face?

A. Yes.

Q. Where? A. On my mouth.

Q. How did you have sand on your face?

A. Because it was sandy where I got beat, where I fell.

Q. Do you recall which road you went from North Las Vegas to Henderson?

A. Went out the Boulder Highway. We got to the Boulder Highway I think by some dirt road, it looked like back streets to me they toured through North Las Vegas.

Q. How soon thereafter did you arrive at Henderson?

A. I would say about twenty minutes. [36]

Q. Then where were you taken, if any place?

A. I was taken to the Henderson police station.

Q. Were you handcuffed at that time?

A. No, sir.

Q. Were you escorted into the Henderson police department? A. Yes, sir.

Q. By whom? A. Carlson and Clifton.

Q. What happened there?

A. They booked me on suspicion of burglary and put me in a cell.

(Testimony of Ray L. Sage, Jr.)

Q. Who booked you, the Henderson police department? A. Yes, sir.

Q. Do you know if any one requested that you be booked?

A. Well, I was in the middle going in, I never paid too much attention. All I know, I was booked on suspicion of burglary at Henderson.

Q. Do you know the name of the police officer that booked you at Henderson? A. No, sir.

Q. You didn't know the names of any Henderson police personnel at that time?

A. The only one I knew was Mayor French.

Q. What was your physical condition at the time you were booked at Henderson? [37]

A. I was beat up and after I been there awhile I had a fainting spell and I asked for a doctor.

Q. Who did you ask for a doctor?

A. The officer that came in the jail. I think he came in to get the plates.

Q. Food plates, you mean? A. Yes.

Q. Do you recall what time it was when you were first booked into Henderson? A. No, sir.

Q. Was it afternoon? A. Yes, sir.

Q. Still daylight?

A. Yes, sir; yes, it was daylight.

Q. When you came into the Henderson police department, did you make a complaint to any Henderson police officers concerning your physical condition?

A. When I was in there and the guy was out doing work, must have been a trusty, after they came

(Testimony of Ray L. Sage, Jr.)

in I asked the officers if I could see a doctor and he asked me what was wrong and I pulled down my shirt and showed him.

Q. What did you show him?

A. Showed him my chest and abdomen.

Q. What did they show?

A. It showed the bruises. [38]

Q. How long were you in the Henderson city jail before you requested the officer for a doctor?

A. I don't know what time it was. I was there three hours.

Q. After you showed this officer your chest and abdomen, what next happened?

A. They took me into a room where there was a shower and a chair and put me down and told me to take my clothes off, they wanted to see to what extent I was hurt, and while I was doing that I had a fainting spell and they went outside and I sat there awhile and they told me to put my clothes back on and go outside and they seated me. A doctor was in the room at the time and there was a stenographer came in and they was asking questions about how I got beat and I told them who beat me up and so they called the North Las Vegas police department and while I was sitting there giving a statement the Henderson police had nothing to do with Captain Clifton and an officer named Fleisher and another officer I didn't know, they came in behind me and they went and told Mayor French I jumped out of the car going fifty miles an hour, and so they took me down to the hospital.



(Testimony of Ray L. Sage, Jr.)

Q. Who told Mayor French you jumped out of the car? A. Captain Clifton.

Q. After that you were removed where?

A. To the Rosa de Lima Hospital.

Q. Were you admitted to the hospital? [39]

A. Yes, sir.

Q. How long did you remain in the hospital?

A. Over night.

Q. Were you examined by any doctor or doctors that you recall?

A. I don't recall. All they did, they took X-ray.

Q. When did you leave the hospital?

A. Next morning.

Q. How did you leave?

A. Henderson police department.

Q. Where did they take you?

A. They took me back to the Henderson police station.

Q. About what time in the morning was that, do you recall? A. No, sir.

Q. Was it daylight? A. Yes, sir.

Q. What next happened after you returned to the Henderson police department?

A. I stayed there until that evening and then Carlson and Clifton, they came over and got me and took me back to North Las Vegas.

The Court: Who were the two men that came after you?

A. Carlson and Clifton.

Q. About what time of day was it that you arrived at the North Las Vegas police department?



(Testimony of Ray L. Sage, Jr.)

A. It was dusk, I would say. [40]

Q. What happened when you got there?

A. They started telling me about other confessions they already gotten and said——

Q. Who is this that was interrogating you?

A. Pool. He was behind the desk. I was in front of the desk and he was conversing with me.

Q. What was said?

A. He asked me—he would tell me about confessions he had, if I was ready now to tell him the truth and I asked him who had confessed, so he showed me one of the confessions, so I told him what happened.

Q. Who was present at the time you had this conversation?

A. Carlson, Clifton.

Q. And what next happened?

A. And then they asked me if I wanted to get out of it.

Q. Get out of what?

A. Out of committing the burglary and I told them of course, so they said they would put me on as a star witness.

Mr. Watson: This use of “they” is very confusing. I would like specifically who asked him if he wanted to get out of the burglary.

The Court: You can cross-examine.

(Jury admonished and recess taken at 3:10 p.m.) [41]

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.)

Mr. Babcock: Your Honor, may I ask leave of the Court, as a matter of accommodation, to withdraw Mr. Sage for the purpose of putting on two witnesses? I spoke to Mr. Watson and he is agreeable, at least, has no objection.

The Court: Very well, permission is granted.

### VIOLA TRICK

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Babcock:

Q. Will you state your name, please?

A. Viola Trick.

Q. Where do you reside?

A. Boulder City.

Q. What is your occupation?

A. Records clerk at Rosa de Loma Hospital.

Q. How long have you been associated with the Rosa de Loma Hospital?

A. Since June, 1955.

Q. You were requested, under subpoena duces tecum, to bring with you certain hospital records relating to a certain Ray Louis Sage, Jr. Do you have those records with you? A. I do.

Q. I hand you, Mrs. Trick, plaintiff's Exhibit 7 for identification [42] and ask you if you can iden-

(Testimony of Viola Trick.)

tify these, consisting of 1, 2, 3, 4, 5, 6, 7 pages—  
what is that exhibit?

A. It is medical record of Ray Sage, Jr.

Q. As of what date?

A. February 27, 1956.

Q. Are those records, and particularly the record that you have before you, a record kept in the ordinary course of the operation of the hospital at Henderson?

A. They are.

Q. Are those records in your custody and control as records clerk?

A. From the date of discharge.

Q. What is the date of discharge?

A. February 28, 1956.

Mr. Babcock: I offer into evidence plaintiff's Exhibit 7 for identification.

Mr. Watson: No objection on behalf of Mr. Pool.

Mr. Matteucci: No objection on behalf of defendant Clifton.

The Court: There being no objection, the offer is received in evidence as government's Exhibit 7. These are hospital records in relation to Sage.

Mr. Babcock: You may inquire.

Mr. Watson: No questions.

Mr. Matteucci: No questions.

(Witness excused.) [43]

## DR. J. B. FRENCH

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Babcock:

Q. Will you state your name, please?

A. J. B. French.

Q. Where do you reside?

A. No. 10 Colorado Way, Henderson, Nevada.

Q. What is your profession?

A. I am a surgeon.

Q. Licensed where?

A. Licensed in the State of Nevada among other states.

Q. How long have you been a medical doctor?

A. I graduated in 1940.

Mr. Matteucci: We will stipulate the doctor's qualifications.

Mr. Watson: We will stipulate.

Mr. Babcock: We will accept the stipulation.

The Court: Very well. The record will show that the qualifications of this witness have been stipulated to, particularly as to the medical qualifications.

Q. Doctor, on about February 27, 1956, did you hold an official position in the City of Henderson?

A. Yes, sir; I was mayor of the town.

Q. On that date were you practicing your profession at Henderson? [44]

A. My office is in Boulder City, Nevada.

Q. On that date, February 27, 1956, did you

(Testimony of Dr. J. B. French.)

have occasion to see, talk with and examine a person by the name of Ray Louis Sage, Jr.?

A. That was the name I was given, I believe so, yes, sir.

Q. When did you first see him and under what circumstances?

A. It was approximately 10:00 or 10:30 that evening, I was called to the jail by one of our police officers, whose name I do not remember, requesting my presence at the city jail. Dr. Coogan was visiting with me at the time and he and I proceeded to the city jail and I requested our police officers to open the jail. I didn't know why I was asked to go up there so I inspected all the prisoners, noticing one man who was apparently ill and unsure.

Q. Who was that man?                      A. Mr. Sage.

Q. Did you give him an examination at that time?

A. Yes; I looked him over and removed him to the Rosa de Loma Hospital and completed the examination I made prior at the city jail, to see that he did receive hospitalization.

Q. Did you have a conversation with him at that time?                      A. Yes; I asked him——

Q. Who was present, if you recall?

A. Myself and I have forgotten the name of the officer on duty, [45] Coogan and the other prisoners.

Q. Where did the conversation take place?

A. In the jail.

Q. At the time you first examined Mr. Sage in the jail, what did you observe?



(Testimony of Dr. J. B. French.)

A. Well, he was speaking with some difficulty. His mouth had been bruised and abrasion of the left cheek. He had a dozen or fifteen long bruises over his chest and abdomen. He was breathing with some difficulty and I suspected he might have a fractured rib at that time. The abdomen was very sore and tense and I wondered at that time whether he might not be ruptured. He had some fever. The examination went no farther at that time, only to see that he did receive hospitalization.

Q. Did you professionally attend Mr. Sage at the hospital?

A. Yes, we went directly to the hospital.

Q. Who is "we"?

A. The patient and myself and I called the police officers at North Las Vegas for guard duty at the hospital.

Q. Do you recall who it was that came over from the police department at North Las Vegas?

A. I do not.

Q. I show you plaintiff's Exhibit 7 in evidence, which is the Rosa De Lima Hospital records of Ray Louis Sage, Jr., and ask if this is the patient that you treated? [46]

A. Yes; these are the records I made at the hospital.

Q. Upon your arrival at the hospital, what was first done by you, Doctor?

A. Well, the first thing we did was give him vitamin K and other medication to stop any hemorrhages, if there were hemorrhages in the abdomen.



(Testimony of Dr. J. B. French.)

He was put to rest and given some sedation, so that we could observe and see if there was any abdominal bleeding. X-ray was ordered, showed no fracture of the rib.

Q. Did you have occasion to visually observe the condition of his body while in the hospital?

A. Yes.

Q. And what did you observe as the result of your examination at the hospital?

A. At the hospital he had practically the same condition I saw at the jail. His mouth was pretty well swollen, he had abrasion of the cheek, he had about a dozen or fifteen large bruised areas over his chest and abdomen. They were approximately—well, they varied from three to ten inches in length, approximately an inch or inch and a half in width, and just a definite bruise of the skin, with the bleeding under the skin. He had extreme difficulty in breathing, which led me to think he might have a fractured rib. The abdomen was hard. I thought he might have a ruptured spleen, which he bled some, but did not continue to bleed after medication. [47]

Q. Did you observe anything about his wrists and ankles?

A. Yes; he had bruises around both wrists, around one ankle, approximately one-half to one inch in width. They did not totally surround the wrist.

Q. Did you observe on your examination, either at the hospital or at the jail at Henderson, if there were any what I would call a skin burn?

(Testimony of Dr. J. B. French.)

A. The one on the left cheek was the only one I could consider might possibly have been an abrasive burn.

Q. Did you observe any sand or gravel on or about his body at the time of your examination?

A. I did not.

Q. Did you observe any sand or gravel in any of the areas that you testified to? A. No.

Q. Doctor, do you have an opinion as to the nature of the type of wound and its cause?

A. No; I do not believe I could answer that question honestly. The man had bruises over his chest and abdomen. It would be beyond my province to state what caused it, not knowing how it happened or anything else. I can only describe there were bruises over the chest and abdomen, as I described previously.

Q. Have you an opinion as to whether or not the type of injury you observed could have been caused by a person attempting to get out of a moving [48] vehicle?

A. The only way that could be done would be if he hit a pipe, gate pipes, and he was thrown directly onto it, because these were about three or four inches lengths. If somebody was thrown directly over onto a pipe gate, at that time they might have bruises, caused by sudden pressure. There was no bleeding injury.

Mr. Babcock: You may inquire.

(Testimony of Dr. J. B. French.)

Cross-Examination

By Mr. Watson:

Q. Dr. French, would you say that the nature of the injuries, bruises, to Mr. Sage's chest and abdomen, would reasonably correspond to his having been struck with a flashlight ninety times?

A. I didn't say that, no.

Q. I know you did not. I am asking, would it be possible, in your opinion, that the injuries which Mr. Sage showed at that time, could be the result of having been struck forceable in the abdomen and chest ninety times with a flashlight?

A. Are you asking me about the number of bruises I saw or the nature?

Q. You told us you saw from twelve to fifteen bruises.

A. That is correct.

Q. Let me put it this way—if Mr. Sage had sustained ninety blows with a metal flashlight to the abdomen and chest, would he, in your opinion, have shown only twelve to fifteen bruises, which is what you saw, or would he not have been much more [49] gravely injured?

A. I believe this would depend on the force applied back of the flashlight. I think it is possible through clothing to get a blow with a flashlight and show no bruise. I do think it possible the bruises I saw to have been inflicted by a flashlight or any other instrument. I wouldn't say ninety bruises—there were about twelve or fifteen bruises. I stated

(Testimony of Dr. J. B. French.)

in my opinion the bruises that were there could have been caused by a blunt instrument, such as a flashlight, the ones that were there. I said a person, if struck ninety times, might or might not show any bruises, depending upon the strength or force of the blow. I can't go any farther than that.

Q. Assuming that a person was truck say ninety times with sufficient force, so that on a great many of those ninety occasions he was knocked to the ground, would he not, in your opinion, show bruises for most of those ninety blows?

A. If the blow was struck with sufficient force to knock a man to the ground, it should certainly show a bruise.

Q. With regard to the skin mark or abrasion on Mr. Sage's temple, would you say that that was a fairly obvious one, which a casual observer would notice if he glanced at Mr. Sage's face?

A. I don't know. It was present, but not marked. It wasn't enough that my attention was immediately drawn to it.

Q. In regard to the injury to Mr. Sage's mouth, did that injury [50] result in considerable swelling of the lip? A. Yes; considerable swelling.

Q. Was only the upper lip swollen or were both the upper and lower lips swollen?

A. Both swollen.

Q. Were they swollen to a degree which would direct the attention of a casual observer who happened to glance at Mr. Sage? A. Yes.

Q. They were quite prominent?

(Testimony of Dr. J. B. French.)

A. Quite prominent.

Q. Did you, when you examined Mr. Sage at the hospital, which I believe you told us was the second examination, examine his entire body, or only his abdomen and chest?

A. He was stripped completely.

Q. If Mr. Sage had had any wounds or abrasions to say his shoulders or back, would you have detected their presence?

A. Yes, sir; he was stripped.

Q. If he had any wounds, say to his posterior or to his legs, would you have detected their presence?

A. I did. He had bruises on his left ankle.

Q. It appeared to be rather swollen, did it?

A. His ankle was swollen somewhat. It was more of an abrasive thing, like a rope or something on that order.

Q. But you saw no bruises whatever on any part of Mr. Sage's body, other than the abdomen and the chest, is that right? [51]

A. That is all I saw, and his wrists, his left cheek and left ankle.

Q. In your opinion, Doctor, if, in addition to having received some ninety blows with a flashlight, Mr. Sage had within a few hours prior to your examination been kicked a number of times with force sufficient to knock him to the ground, would that kicking, plus the injury to his lip, plus the ninety blows with the flashlight sufficient to knock him



(Testimony of Dr. J. B. French.)

to the ground, wouldn't that all be calculated to put Mr. Sage into a rather immediate state of shock?

A. That depends on the individual. He would certainly be in pretty bad shape if it involved all you enumerated.

Q. Doctor, if this man had had ninety flashlight blows hard enough to knock him to the ground, plus a number of kicks hard enough to knock him to the ground, plus the blow in the mouth, would it not be highly probable that the man would show some other sign in his face of the injury?

A. What type of sign?

Q. Bloodshot eyes, quivering nostrils, quivering lips.

A. This man was in severe pain when I saw him and showed evidence of it.

Q. Did he appear to have been crying?

A. No; I don't know if he had been crying. I didn't make a note of it.

Q. Dr. French, in your experience have you treated many [52] persons who have been subjected to physical beating?      A. Yes; I have.

Q. Have you ever, in your experience, treated a man who has been subjected to as severe a physical beating as I have described, who was in as good condition as Mr. Sage when you examined him?

A. This again, I think, takes us back to the strength of the blows. In my opinion when the blows of a flashlight is enough to knock a man to the ground, and if he was struck with this force ninety times, the man would probably not be in good con-

(Testimony of Dr. J. B. French.)

dition, and this man was not in good condition. That is why I required immediate hospitalization.

Q. As a matter of fact, Doctor, don't you think, assuming the ninety blows with a flashlight are enough to knock a man to the ground, plus additional injuries we have described, the hard kicking, the bruises, that very severe internal injuries would have resulted, isn't that correct?

A. From the bruises I saw on the chest and abdomen I expected internal injuries.

Q. But in fact they didn't develop, isn't that true?

A. No; due to the medication that we gave, we did have the blood stopped. There was definitely some internal injury to this man.

Q. Would you describe it as being a very grave internal injury?

A. Any internal bleeding is grave unless controlled. This [53] happened to be controlled, so it was not grave. If not controlled it would continue very serious.

Q. Did you suspect an injury to the stomach?

A. The spleen lies next to the stomach.

Q. But not to the stomach?

A. I didn't feel so.

Q. Did you suspect any internal injury to the small intestine?

A. It is hard to hurt a soft organ, such as the stomach or bowel with a blow. It is usually some other organ, like the spleen or liver.

Q. The spleen, in comparison to the liver, is a

(Testimony of Dr. J. B. French.)

great deal larger?      A. That is true.

Q. And it occupies quite a good deal of space in the normal person of the upper abdominal cavity, is that right?      A. Yes.

Q. Did any of the bruises cover completely the area in which the liver is located?

A. Yes; I believe they did overlay part of it. Most of the injury was on the left side, overlaying the upper abdomen and left side of the chest.

Q. And you did not diagnose at any time any rupture to the liver?      A. I did not.

Mr. Watson: No further questions. [54]

Mr. Matteucci: No questions.

Mr. Babcock: No further redirect.

(Witness excused.)

Mr. Sage resumed the witness stand.

RAY L. SAGE, JR.

Direct Examination  
(Continued)

By Mr. Babcock:

Q. Mr. Sage, before you were asked to step down, I believe you testified that you had been returned to the North Las Vegas police department, at which there there was an interrogation of you by Officers Pool, Clifton, and who was the other man?

A. Carlson.

Q. Now will you state what was said and what was done at the time of this interrogation?

(Testimony of Ray L. Sage, Jr.)

Mr. Watson: Were we up to the 28th, the following day?

Mr. Babcock: Yes.

Q. When you discuss the conversation, will you state what was said and the name of the person who said it, if you can recall.

A. Well, Chief Pool did most of the talking, I remember that, and he said he had a statement to the effect I was involved in the burglary and I asked him to see it, and that was about all it was. I knew they had a statement, so I read the statement. So I told the truth.

Q. What did you tell them with reference to this burglary?

A. I told them the Little Giant Market was burglarized and Foodland Market and the Valley Market.

Q. Did you give them a written statement at that time? [55]

A. Yes.

Q. Did you sign that statement?

A. Yes, sir.

Q. Were you asked by any of these officers, and if you did, which one, to make a statement concerning your injuries?

A. Say that again.

Q. At the time that you were returned from Henderson to the North Las Vegas police department, on February 28, 1956, were you asked by any North Las Vegas police officer to give a statement concerning the cause of your injuries?

A. Yes, sir.

Q. Who made that request?

(Testimony of Ray L. Sage, Jr.)

A. Chief Pool.

Q. Who was present at the time?

A. Capt. Clifton.

Q. Was any one else present, if you recall?

A. No, sir.

Q. What was said by Chief Pool concerning this matter?

A. Well, first they wanted me to make a statement I jumped out of the car going fifty miles an hour. They had already made out a report to that effect.

Q. They had already what?

A. Made a report, officer's report, something like that.

Q. And did they show you that officer's report?

A. I think so, I don't remember now. [56]

Q. Continue as to the conversation you had with Chief Pool.

A. That was about the extent. I told them I wouldn't use that as an excuse for getting beat up, because it would involve me in the 101 Club burglary, which I didn't do, so I told them no, I wouldn't make a statement in that, so they asked me——

Q. Who asked you?

A. Just a general conversation, and so they figured out I fell, so we made out a statement to that effect.

Q. Who wrote it out?                      A. I did.

Q. Did any one tell you what to write?



(Testimony of Ray L. Sage, Jr.)

A. Yes, sir.

Q. Who?

A. Capt. Clifton and Chief Pool both did.

Q. How did they go about it?

A. By telling me what to write down and asked if it sounded all right to me.

Q. What did you put in this statement, do you recall?

A. I just put—I can't recall the statement, I mean everything—but it was just to the effect that I fell with a slot machine on my chest, made all those bruises, and there was no physical violence of any sort against me.

Q. Where were these slot machines at the time you are speaking of?

A. They were supposed to be at the Foodland Market. [57]

Q. Why did the officers ask you to write such a statement?

A. Well, so it wouldn't be held against them, I guess.

Q. Was that true or not?      A. What?

Q. How did you receive your injuries?

A. I received them by a beating by Capt. Clifton.

Q. At any time did you make an attempt to jump out of the car?      A. No, sir.

Q. While you were in custody of the North Las Vegas police department?      A. No, sir.

Q. At any time did any slot machines drop upon your person?      A. No, sir.

Q. About what time of day was it on February

(Testimony of Ray L. Sage, Jr.)

28th when you came back to the North Las Vegas police department and this interrogation?

A. It was in the evening. I don't know what time it was. I didn't know what time it was between the morning of the 25th, I didn't know what time it was until they took me to jail. I never seen a clock.

Q. Do you know what happened to the statement that you wrote concerning the slot machines falling on your person?

A. No, sir; I do not know.

Q. After you had made that statement in writing then what happened? [58]

A. Then I was taken to the city jail.

Q. By whom?

A. I don't remember; I think it was Capt. Clifton and Carlson.

Q. Did you have a conversation with Capt. Clifton on the way to the city jail, if you recall?

A. No, sir; not that I recall.

Q. What happened when you got to the Las Vegas city jail? A. They put me in the jail.

Q. Did you make a complaint to any one at the city jail? A. No, sir.

Q. Upon your admission to the city jail by the jailer then on duty, did he examine your person, physical examination? A. No, sir.

Q. Did any one examine you at that time?

A. Not that I remember. I can't remember whether they examined me or not. I think they just

(Testimony of Ray L. Sage, Jr.)

had me take my shoes off, is about all. My belt—I didn't have no belt.

Q. After you were admitted to the Las Vegas city jail, at any time did you return to the North Las Vegas jail?

A. No, sir. I didn't know they had a jail.

Q. Not the jail, I mean the police department?

A. No, sir.

Q. With reference to this burglary that you have testified to, did you admit your guilt?

A. What was that again? [59]

Q. With reference to the burglary that you have testified to, did you admit your guilt?

A. Yes, sir.

Q. And by reason of that, were you thereafter sentenced to prison?

A. Yes, sir.

Q. Where?

A. Carson City.

Q. You have since then been released from the Nevada State Prison?

A. Yes.

Q. And you have been convicted of a felony, is that correct?

A. Yes.

Q. Now at the time you returned to the North Las Vegas police department on the evening of February 28th, was there any inducement or promise made by any of the officers for your giving the statement that a slot machine fell upon your body?

A. Yes, sir.

Q. What was that and what was said, by whom?

A. Well, Chief Pool did most of the talking. I don't remember now exactly who said it, but they said they would put me on as a star witness if I

(Testimony of Ray L. Sage, Jr.)

would make out the statement, and I don't remember, I think I said no, or something like that; anyway I gaged around, so they said they were going to take blueprints of the burglary and had about fourteen of them at the [60] time and said they were going to take them all and charge each one to have ten years in prison. I guess I didn't make out the statement.

Q. That was the remark you made?

A. No, sir; I just said that now.

Mr. Babcock: You may inquire.

#### Cross-Examination

By Mr. Watson:

Q. Mr. Sage, do you recall my being in Carson City last winter, I came to see you?

A. I remember a lawyer.

Q. Do you remember it was me?

A. You look familiar.

Q. You told me there in Carson City, did you not, that you had been dressed on February 27th, in a sort of T-shirt and a windbreaker and pair of slacks, is that right?

A. No, sir.

Q. How were you dressed?

A. I was dressed in a pair of blue corduroy slacks and a wool plaid shirt.

Q. What color was it?

A. I don't know—I mean it was different colors.

Q. Did you have a jacket on? A. No, sir.

Q. Just the shirt and trousers, is that right?

(Testimony of Ray L. Sage, Jr.)

A. Yes. [61]

Q. Was it a thick shirt?

A. Not exceptionally thick.

Q. On these times, Mr. Sage, I think you were arrested about nine o'clock, in that right?

A. Yes, sir; about.

Q. And did you manage to go to the police station? A. Yes, sir.

Q. And when you got there, you were there just a short time, fifteen minutes? A. Yes.

Q. And then about an hour and a half went by while you sat there and no one paying any attention to you, is that right? A. Yes.

Q. And then a period of a very few minutes when you were taken out to the car and questioned there, is that right?

A. Yes, sir; just took a few minutes to do it.

Q. All that time adds up to about two and one-half hours, wouldn't you say?

A. I can add. I told you before I can't remember the exact time.

Q. Give me your best recollection. Wouldn't that add about two and one-half hours between the time you were arrested and the time you started off on this trip you told us about out in the country?

A. Close. [62]

Q. So that places the time that you started your trip more or less about half past eleven, is that correct?

A. I don't know whether it is correct or not.

Q. What is your best recollection?



(Testimony of Ray L. Sage, Jr.)

A. Well, my best recollection on the time was about that; I was just guessing.

Q. After you got there, I think you told us that this entire affair, with the several stops made and this extensive beating, required about an additional hour and a half, is that right?

A. No, sir; I didn't say.

Q. How long would you say the whole round trip took, going to this place in the country and the beating up there and trip back to the police station?

A. I couldn't exactly say, putting it all together.

Q. Well, would you say it was closer to ten minutes or two hours?

A. I wouldn't say neither one of them.

Q. Mr. Sage, I believe when you were at Henderson and Dr. French was there, in his capacity as mayor and capacity as physician, you made a short statement didn't you?

A. Yes, sir.

Q. And you told us about the statement on the night of the 28th that you made back in the police station in North Las Vegas, that is, when they brought you back. You have already told us about that? [63]

A. Yes, sir.

Q. When you were at Henderson and you were first telling your story, Mr. Sage, you didn't really know any of these people by name, did you? You hadn't known them before?

A. Pool, I am sure he told me his name.

Q. Do you recall telling me in Carson City that you had identified Mr. Pool from a large group photograph of the North Las Vegas police depart-

(Testimony of Ray L. Sage, Jr.)

ment that was handed you by Harvey Dickerson, the District Attorney? Do you remember that?

A. I don't know who the guy was, but I remember a picture that was shown to me.

Q. There were about twenty or thirty men in that picture, weren't there?

A. I don't know how many.

Q. A good many? A. Yes.

Q. And you picked one face out of that picture, is that right? A. No, sir; I picked three.

Q. Those were the faces of Detective Carlson, Chief Pool and Capt. Clifton, correct?

A. Yes, sir.

Q. And didn't you tell me in Carson City that until that time you didn't know which one was which, the names of any of them? Isn't that what you told me? A. No, sir. [64]

Q. What is the truth of it, Mr. Sage, did you know these people before, at the time that this supposed beating took place?

A. Well, that would be kind of hard to say, because I knew I knew Pool, but I couldn't say, I can't remember, whether Capt. Clifton told me his name, or Carlson.

Q. All right, sir. I would like to show you defendants' Exhibit A and have you look it over and tell me whether or not you know what that is?

A. That sort of looks like the statement I made at Henderson.

Q. Is that your signature on the second page?

A. Yes, sir; it looks like it.

(Testimony of Ray L. Sage, Jr.)

Q. Do you see the notary's seal right down here in this corner, Mr. Sage, and the name, A—W. Williamson, handwriting?

A. Yes, sir; I see a seal and name.

Q. And it says there, does it not, "Subscribed and sworn to before me this 28th day of February"?

A. Yes, sir; I see it.

Q. Was Miss Williamson, a notary public there in error, or was it true that at that time in Henderson, in the custody of the Henderson police department, you did swear to that statement? Did you swear to it or is Miss Williamson, the notary, wrong?

A. I don't remember Miss Williamson, to tell the truth.

Q. Did you swear to the statement, do you recall that? [65]

A. No, sir; I don't recall that.

Q. I want to ask you to please look at one portion of this statement, Mr. Sage. It begins——

Mr. Babcock: If the Court please, I don't believe this is in evidence.

The Court: It is not in evidence.

Mr. Watson: No, your Honor, I have not yet offered it.

Q. It begins right here, just here at this place, I would like you to read that, please?

A. Yes, sir; I have read it.

Q. Doesn't that say, Mr. Sage, that you thought it was the chief of police, but you didn't know whether there was a chief of police.

(Testimony of Ray L. Sage, Jr.)

Mr. Babcock: Your Honor, I believe before any reference is made to the contents of the exhibit, it should be offered. I object on that grounds.

Mr. Watson: I offer it now, your Honor, for the purpose of impeaching the credibility of the witness. He admitted he signed it with his signature and it appears to be a statement given by him at Henderson.

Mr. Babcock: May I see it, counsel? No objection.

The Court: The offer may be received in evidence as Exhibit A of the defendant Pool.

Q. I will go back to the place where we were, Mr. Sage. I will ask you please to read this question right here, read to [66] the jury.

A. You want me to read it out loud?

Q. If you will, please.

A. "Do you know definitely who the police were? Do you know their badge? No, not for sure."

The Court: That question was directed to a badge. I just don't understand the import. Does that mean he didn't recognize the person?

Q. Will you go on just here, please, sir, right here, the second part of your answer, beginning with "three men."

A. "Three men were working on me and after they took the handcuffs off and the chief of police—I think it was chief of police—took me down in a gully. The cop was standing down there. They took me down and talked a little bit."

(Testimony of Ray L. Sage, Jr.)

Q. Did you really know the name of the man you refer to when you said, "A cop was standing at the gully"? Did you know the name of the cop that was standing there at that time?

A. That is a hard question to answer, since you want it definitely. I knew the chief of police before anything else like that happened. He introduced himself when I first came to the police station.

Q. I will show what is marked for purposes of identification defendant Pool's Exhibit B, and ask you to examine this document, of several pages, and tell me whether or not you know what it is?

A. Yes, sir. [67]

Q. Please look at each page, Mr. Sage, to be certain.

A. You mean you want me to read it all?

Q. No, just glance at it and make sure each page is something that you recognize.

A. Yes, sir.

Q. Do you know whose handwriting it is in?

A. Yes, sir.

Q. Whose? A. Mine.

Q. Whose name is signed at the end?

A. Ray L. Sage, Jr.

Q. Is that your signature?

A. Yes, sir; it looks like it.

Q. That is statement that you gave on the night of February 28th at the North Las Vegas police department? A. As far as I know.

Q. Would you like to examine it further to make sure? A. It looks to me like the same.



(Testimony of Ray L. Sage, Jr.)

Mr. Watson: The defendant Pool offers in evidence Defendant Pool's Exhibit B, if the Court please.

Mr. Babcock: May I inquire on voir dire?

The Court: You may.

*Voir Dire Examination*

By Mr. Babcock:

Q. Is this the statement you signed or was it on a different type of paper? [68]

What kind of paper was it, if you recall?

A. It was white.

Q. Was it in ink or pencil?

A. It was in ink.

Q. What did you do with that statement after you had written it and signed it?

A. They had it. I didn't do nothing with it.

Q. Do you know where it is now?

A. No, sir.

Mr. Babcock: Your Honor, I object to the introduction of this particular exhibit on the ground it is not the best evidence. It appears to be a photostatic copy of a statement. While we have no objection to the original, we would object to the photostatic copy being introduced.

Mr. Watson: If the Court please, in regard to the best evidence objection, Mr. Pool is completely unable, in his present position, having no access to the official records, to produce the original. The witness identified each page as being his handwriting and

(Testimony of Ray L. Sage, Jr.)

I think the policy of the best evidence rule is certainly satisfied by that statement by Mr. Sage.

The Court: Let the Court see it. What efforts did counsel make to obtain the original?

Mr. Watson: Your Honor, I made extensive perusal of the records of the North Las Vegas police station, going through everything they said they had available there. Chief Bunker was [69] very co-operative in that respect, and after a careful inspection of everything they said was contained there, I was forced to rely upon this copy, which was one that Mr. Pool had had made while he still occupied his official position, retaining the copy for his personal possible future use and, of course, leaving the original in the official records, and I feel I have shown due diligence, your Honor.

The Court: Any further comment, counsel?

Mr. Babcock: I have this comment, your Honor—that we have no objection to the admission of the statement, provided that the original is furnished. Now counsel has stated he has made a perusal of certain of the records. The original obviously was a public document on file, or at least maintained by the North Las Vegas police department and I should think it would be incumbent upon counsel to subpoena the custodian of those particular records relating to this matter and if they are not here, the original that is, that there should be some explanation for it.

The Court: The Court will withhold ruling on this offer at this time and give counsel an oppor-

(Testimony of Ray L. Sage, Jr.)

tunity to make a further attempt to produce the record.

Mr. Watson: May I retain possession of it, your Honor?

The Court: Yes.

Q. On that night of the 28th, when you went in to make a [70] statement, you were introduced to Al Ferguson, police commissioner, were you not?

A. I can't remember.

Q. Do you otherwise know or recall Mr. Al Ferguson?

A. I have seen him today. I have seen him at the police department too, but I didn't know him at the time.

Q. Wasn't the situation, when you made that statement, that you and Mr. Ferguson and Mr. Pool were alone together in a room and Mr. Clifton wasn't there? A. I can't remember that.

Q. You told us that they told you what to say in your statement the night of the 28th. Now who was it specifically who told you what to say?

A. It was general conversation and I wouldn't say one told me. I would say all of them.

Q. By saying general conversation, do you mean that Detective Carlson and Capt. Clifton and Chief Pool, all three, told you what to say?

A. No, sir.

Q. Was the statement dictated to you and then copied out in your handwriting?

A. Not exactly.

Q. Was it in your own words?

(Testimony of Ray L. Sage, Jr.)

A. In my own words.

Q. Was all of the statement that you gave that night true? [71]

A. No, sir.

Q. Is it all false?

A. There are parts in there that are true.

Q. And parts that are false?

A. Yes. It all leads to being false.

Q. Isn't it so, Mr. Sage, that the statement that you gave that night did not clear or take out of the picture Mr. Clifton at all, but rather put Mr. Clifton and Mr. Carlson in the picture and left Mr. Pool out? By being in the picture, I mean didn't you say that night that it was Carlson and Clifton that beat you?

The Court: That question is not understandable. Reframe it.

Q. What did you say that night in this statement, if you recall?

A. I don't recall what I wrote in the statement.

Q. Did you make any statements after this one to agents of the government?

A. After that one, yes, sir.

Q. Did you make any statements after this one to persons connected with the Clark County District Attorney's office?

A. Not that I recall. I do not recall. I know I talked to the district attorney. I think. I didn't know his name or anything.

Q. When you were in Henderson and you had had your conversation [72] with Dr. French, Mayor French, and the other people from the Henderson

(Testimony of Ray L. Sage, Jr.)

police department who were there and you had had your night's stay in the hospital, did you know ahead of time the next day that you were going to be turned back over to the North Las Vegas police department? Did you know where you were going?

A. With reference to that question, right there I did not know.

Q. Did you realize where you were going when you saw Carlson and Clifton show up, come into the room, to take you out on the 28th?

A. Not that I recall.

Q. You didn't figure out that you were going back to North Las Vegas?

A. I didn't know. I was kind of scared I was going to get beat up again.

Q. Did you ask Mayor French, or any policemen over there, not to turn you back to the North Las Vegas police?      A. No, sir.

Q. You were scared you were going to be beat up and you didn't say anything?

A. Not exactly scared, but I had that idea, also I had already gained a little bit—I started to say——

Q. Please finish.

A. I started to say something that really——

Q. You told me in Carson City that you played football on the High School team in West Virginia, didn't you tell me that?      A. Tell who?

Q. Me.      A. Maybe, I don't know.

Q. Well, you did play football in High School?

A. Yes, sir.



(Testimony of Ray L. Sage, Jr.)

Q. Did you learn anything there about how to protect yourself from getting hurt if somebody was perhaps jumping on you or kicking you, something like that?

A. Yes, when they run against me I should run if I could run; if I couldn't put my hand over my body.

Q. Did you ever in football days kind of crouch down, up into sort of a ball and turn your head down like this to protect your head and body as much as you could? Did you ever do that playing football?

A. Yes, sir.

Q. But this time, when you were getting those ninety flashlight blows, every time you got one, you hopped right up again, is that right?

A. I don't remember saying that.

Q. What did you say?

A. I said I had to get up.

Q. Did you come back each time?

A. Yes, sir. [74]

Q. They knocked you down and you came up, they knocked you down and you came up?

A. Yes, sir.

Q. And that happened many many times?

A. I don't know it hapened many many times. It took a few blows to knock me over.

Q. You told us on direct examination that they, that is the officers there, on February 28th, in the North Las Vegas police department, told you to say that you had a slot machine fall on you when

(Testimony of Ray L. Sage, Jr.)

you were carrying it out of the Foodland Market, is that what you said?

A. Yes, sir; that is what they had me to say.

Q. Is it true while you were carrying one of the slot machines out of the Foodland Market that morning at six o'clock you did stumble and fall and a machine fell on your chest and abdomen?

A. No, sir.

Q. Who thought of that idea to say that?

A. I can't say exactly who told me that. It was between all three of them.

Q. But the principal part of your bruises, Mr. Sage, were all on your stomach, your abdomen and your chest. The fact that a slot machine had fallen on that area of your body would account for it, wouldn't it?

A. Yes. I don't know whether it would or not. I don't know the extent of the damages. [75]

Q. You didn't get any of these blows while you were lying down out there; you were standing up every time?

A. Which place are you talking about?

Q. The ninety blows with the flashlight, and I think you said twenty times or thereabouts that Mr. Pool kicked you. Let us take the ninety blows with the flashlight. You got every one of those standing up, didn't you?

A. As far as I know I did.

Q. Well, were any of the people standing behind you who were out there, Carlson or Clifton?

A. Carlson, I never noticed him much.

(Testimony of Ray L. Sage, Jr.)

Q. Nobody there came from behind, did they?

A. Yes.

Q. Who hit you?

A. No one hit me, I was kicked from behind.

Q. By whom?           A. Carlson.

Q. Mr. Carlson kicked you?           A. Yes, sir.

Q. Did he make any bruises when he kicked you from behind?

A. I don't know; I couldn't see.

Q. Were you sore when you sat down?

A. Yes, sir; I was sore all over. I can't say definitely.

Q. Did anyone kick you in the legs in front or behind?

A. I don't know, don't remember. [76]

Q. Do you think if they had you would have remembered it?

A. I couldn't say because there was a lot of pain at the time. I wasn't thinking too well.

Q. After you finished your high school in West Virginia, you worked for awhile in the coal mines, I think you told me, is that right?

A. Yes, sir.

Q. And at the time of this arrest you weighed about 215 pounds?

A. Approximately, I think.

Q. A pretty big and husky fellow?

A. Yes.

Q. But you didn't fight back at all?

A. No, sir.

Q. You offered no resistance at all?

(Testimony of Ray L. Sage, Jr.)

A. No, sir.

Q. Where was the pistol that Mr. Clifton was carrying? Did he have it on the coat of his brown suit?

A. I don't recall where he had it. I never saw it.

Q. But suddenly he had a pistol?

A. Yes, sir.

Q. Did Pool have a pistol?

A. Not that I recall. He told me to get down in the seat.

Q. Where did he pull it out?

A. When we left North Las Vegas.

Q. Where was he carrying it on his body? [77]

A. I don't remember. I wasn't looking at the time.

Q. Did Carlson have a pistol?

A. He was around when we were there, after I got beat up, when I was down in the gully.

Q. Did he pull his pistol on you, too?

A. He ran down the bank and pulled it toward me.

Q. After you made your statement on the night of the 28th at the North Las Vegas police department, Mr. Sage, didn't you go out with police commissioner Ferguson and some other people to have a meal?

A. Yes. There was only one right with me.

Q. Who was that?

A. Capt. Clifton. I was sitting beside him on the other side.

Q. Was the atmosphere friendly?

(Testimony of Ray L. Sage, Jr.)

A. Yes, sir.

Q. Was it friendly because as you said, you told us, all you had to do was to sign this statement that night on the 28th and you could get out of these burglary charges? That is why it was friendly?

A. I guess it would be that way. We was talking, went out and picked up another guy at the bar, stopped and picked up a guy and they were talking.

Q. And afterward you went to the city jail here in Las Vegas, is that right? [78]

A. Yes, as I recall.

Q. And you were in the city jail?

A. Yes, sir.

Q. The North Las Vegas police department didn't deliver on this bargain they made with you to drop the burglary charges, did they?

A. Well, I hadn't been picked up for it.

Q. As a matter of fact, you were convicted on a burglary charge, weren't you?

A. Yes, I pleaded guilty.

Q. Did you plead guilty because you were guilty, or for any other reason?

A. Because I was guilty.

Q. And the promise that the North Las Vegas police department, Carlson, Clifton and Pool had made you, you say to get you out of it if you signed that statement that night, wasn't carried out, was it?

A. No, sir.

Q. Did you make any complaints about it?

A. I didn't make any complaints about it.



(Testimony of Ray L. Sage, Jr.)

Q. You didn't try to get them to carry it out?

A. I never saw them.

Q. Did you ask to see any of them?

A. No, sir.

Q. Mr. Sage, the idea has been expressed here of getting out [79] of the burglary charges in return for a statement. Isn't the truth of the matter that when you did not get out of the burglary charges is when you made your complaint against Pool and Clifton?

A. No, sir. I pleaded guilty at the hearing, or whatever you call it, the Justice Department on the other side of the county building, across the street, I pleaded guilty and I came over and they took me to the county jail and they found out about me getting beat up. I don't know how they found out about it. I know there wasn't no use lying, so they gave me a lie detector test, so I knew there was no use lying about it then.

Q. You told us that you admitted three burglaries, right?

A. Yes.

Q. You were not prosecuted for the other two, were you?

A. No, sir.

Q. Did any one ever explain to you why you were not prosecuted for the others?

A. Not that I recall.

Q. Did any one ever indicate to you in any way that it would have something to do with this case, being a witness in this case?

A. No, sir. I haven't heard about it. I just

(Testimony of Ray L. Sage, Jr.)

thought they put it all together and charged me with one charge.

Q. You served about ten months on the one to fifteen sentence?

A. Yes, ten months and two days. [80]

Q. And you are now fully pardoned—what is the condition?

A. Commuted.

Q. And in other words, the sentence is done?

A. Yes, sir.

Q. You told us, when Mr. Babcock was questioning you, that at the time all this happened, you were a permanent resident of West Virginia, correct?

A. Yes, sir; I was a permanent resident. I don't recall telling him about being a resident of West Virginia.

Q. But since you got out of the penitentiary you have been a permanent resident of Las Vegas, is that right?

A. No, sir.

Q. Where do you live?

A. Marlinton, West Virginia.

Q. Haven't you been in Las Vegas most of the time since you got out?

A. No, sir; never been in Las Vegas until I just came.

Q. Not at all?

A. No, sir.

Q. You have gone back home with your family?

A. Yes.

Q. While you were in the hospital in Henderson did you make any statement to Mr. Fisher, Sgt. Dan Fisher, about why you brought up the whole sub-

(Testimony of Ray L. Sage, Jr.)

ject of being injured?      A. Not that I recall.

Q. Did you have any conversation with Danny Fisher at all about this claim that the North Las Vegas police department had beaten you?

A. He was in the hospital. He was guarding me in the hospital.

Q. He was in the same room?

A. Yes, sir. I don't know whether we talked much about it.

Q. You don't recall making any statement about that?      A. No, sir; not that I recall.

Q. Did you have, as your purpose in making the complaint about the beating, the idea in some way that you might get out of your own problems, shoving that off on the police officers? Wasn't that your purpose?      A. Would you say that again?

Q. Didn't you have, as your purpose in bringing this whole thing up, beatings, the idea that you could get Chief Pool and Capt. Clifton and Detective Carlson to turn you loose?      A. No, sir.

Q. When you first got to the police station on the morning of the 27th and they talked to you about fifteen minutes, they told you, did they not, that on the floor of the rent car that you had used there was imprint of the slot machine? Didn't they say that? Floor of the trunk?

A. No, sir; not that I recall.

Q. The floor of the trunk of the car that you and Mr. Gaither were using had a regular rubber map and a soft gummy, tarry [82] substance underneath exposed, wasn't it?

(Testimony of Ray L. Sage, Jr.)

A. I don't know, I never noticed it.

Q. Didn't they tell you, during that fifteen minutes, they found a number of loose quarters and dimes over in the corner of the trunk of that car?

A. They mentioned the subject.

Q. Well, is that what they told you?

A. They said there were some dimes and change in the trunk, yes, sir.

Q. Didn't they tell you there had been a complaint go out and orders within three hours of the time of the burglary, because one of the tires on the car you used was worn smooth and they had a distinct trail—distinct rather than having no trail at all—didn't they tell you that in this fifteen minutes?

A. I can't rightly remember.

Q. Didn't they tell you Sgt. Miller made a cast of that tire, which is the way they identified the car right in close of your place?

A. Yes, I do remember them saying something about a cast, they made a cast, but I thought it was of the foot, the shoe.

Q. That is another thing. They told you during that fifteen minutes that they had found a heel print just inside the door of Foodland Market and matched to that print of the heel of the shoes you were wearing, didn't they tell you that?

A. No, sir. [83]

Q. They told you something about the feet?

A. I don't remember, but they looked at the shoe on my foot and I showed it to them.

(Testimony of Ray L. Sage, Jr.)

Q. Didn't you ask, too, how it was they be able to solve the thing, picking you up that fast?

A. No, sir.

Q. When Carlson and Clifton took you from the North Las Vegas police station the afternoon of the 27th—that is the day of the Foodland burglary—you say they drove you around quite some time, isn't that what you said? A. Yes, sir.

Q. They just took a bunch of short cuts?

A. I don't know whether short cuts or what, but I do distinctly remember the dirt road, not passing through Vegas.

Q. You know where College Boulevard is?

A. Yes, sir.

Q. Do you know where Nellis Boulevard is?

A. Yes, sir.

Q. Isn't it true that near the intersection of those two streets, or within five or six blocks of it, you did try to jump out of the car?

A. No, sir.

Q. Who made up that story? Which one of the officers made up that story?

A. Well, I don't know which one made it up. [84]

Q. Was it one of the officers who made it up?

A. I guess so. It had to be somebody connected with the police department that made it up.

Q. And so your testimony is that the three officers, Pool, Carlson and Clifton, made up two stories; they made up the story that you tried to jump out of the car and then they made up the



(Testimony of Ray L. Sage, Jr.)

story that the slot machine fell on you, is that your testimony?

A. I never said that Pool and Clifton made up the story I jumped out of the car.

Q. Who did?

A. I don't know who did. They put it in the record.

Q. Didn't you tell me that they asked you to put it in the statement, that you tried to jump out of the car?

A. Yes, they wanted me to make a statement to account for the bruises, physical damage I had on my body.

Q. All right; then, Mr. Sage, which one of the officers asked you to say in a statement that you had been hurt trying to jump out of a car near the intersection of Nellis and College?

A. I don't recall which one said it.

Q. Do you now recall which one of the officers told you to say that you dropped the slot machine on yourself getting out of the Foodland Market?

A. No, sir; they both was giving me things to write down, so I don't recall exactly which one said it. [85]

Q. By both, who do you mean?

A. Pool and Clifton.

Q. Not Carlson?           A. No, sir.

Q. Did you have a scratch on your left arm or wrist some place?

A. I don't recall which arm it was, but there was a ring mark made on the skin, yes.

(Testimony of Ray L. Sage, Jr.)

Q. Are you absolutely sure that you did not have that that morning before you were even arrested?

A. I couldn't say absolutely sure, but they turned my wrist like that and put handcuffs on it.

Q. You were an airman at Nellis?

A. Yes.

Q. Were you provided by the Air Force with quarters on the Base? A. Yes.

Q. But you did not live there?

A. Part of the time.

Q. But you maintained a regular room at the Grande Court, is that right? A. No, sir.

Q. But you were at the Grande Court a good deal? A. Yes, sir.

Q. And you had several friends who stayed there—Gaither was one of them? [86]

A. Yes, sir.

Q. And Jerry Fritzell was another?

A. Yes.

Q. What was the name of the fellow whose car you used? A. Balzar.

Q. He was another friend? A. Yes.

Q. And Frank Farola? A. Yes, sir.

Q. And Farola and Balzar had their wives also? A. Yes.

Mr. Rittenhouse: If the Court please, we object to this line of testimony. It is irrelevant and immaterial.

The Court: I can't see, counsel, where it has anything to do with the picture.

(Testimony of Ray L. Sage, Jr.)

Mr. Watson: If the Court please, I am gradually developing something I think should go in.

The Court: Do you have to spend all afternoon developing——

Mr. Watson: If the Court please, the materiality—I propose to show that this witness——

The Court: Do not make any statement before this jury what you propose to put in. Let the jury determine. At the moment the objection is sustained.

Mr. Watson: May I ask the jury be taken [87] out?

(Jury admonished and excused until 10:00 o'clock the next morning. Recess at 5:00 o'clock until 10:00 o'clock, October 15th.)

Tuesday—October 15, 1957

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate jurors stipulated.)

The Court: You may proceed.

Mr. Sage resumed the witness stand on continued

#### Cross-Examination

By Mr. Watson:

Q. Mr. Sage, you remember the people I named to you yesterday who were living with you at the Grande Court?      A. Yes, I remember.

Q. Is it not a fact that you, with all those other

(Testimony of Ray L. Sage, Jr.)

people, Jerry Fritzell, Coite Gaither, Mr. Balzar and Mr. Farola, had a free-for-all fight the preceding Sunday, the 19th?      A. No, sir.

Q. Isn't it true the North Las Vegas police department came to a room where you were physically present in the Grande Court and stopped such a fight on Sunday night?      A. Not that I recall.

Mr. Watson: No further questions.

Cross-Examination

By Mr. Matteucci:

Q. As I understand, at the time this beating was supposed to take place, you were handcuffed, is that correct? [88]

A. Part of the time.

Q. Were your hands cuffed behind your back?

A. Yes, sir.

Q. In what position, like this?      A. No, sir.

Q. Like this?      A. Yes.

Q. Did you have any bruises on your shoulders or back, do you know?

A. I think there was some on the kidney; I am not sure about my back.

Q. During this supposed beating, you were knocked down a number of times, is that correct?

A. Yes, sir.

Mr. Mattuecci: That's all.

(Testimony of Ray L. Sage, Jr.)

Redirect Examination

By Mr. Babcock:

Q. Mr. Sage, what is your age?

A. Twenty-two.

Q. When were you born?

A. November 15, 1934.

Mr. Babcock: Nothing further.

(Witness excused.)

GEORGE F. CRISLER

a witness on behalf of the plaintiff, being duly sworn, testified as follows: [89]

Direct Examination

By Mr. Babcock:

Q. Will you state your name, please?

A. George F. Crisler.

Q. Where do you reside?

A. Henderson, Nevada.

Q. What is your occupation.

A. Chief of Police.

Q. For what city?

A. Henderson, Nevada.

Q. On February 27, 1956, what was your employment?

A. Chief of Police, Henderson, Nevada.

Q. On that date, Chief Crisler, did you have occasion to receive the admission of Ray Lewis Sage, Jr., at Henderson?



(Testimony of George F. Crisler.)

A. I personally did not, one of my officers did.

Q. You are here in response to a subpoena, are you not?      A. That is correct.

Q. Requesting that you bring with you certain records relating to the booking of Ray Lewis Sage, Jr., at the Henderson police station, Henderson, Nevada, on or about February 27th?

A. That is correct.

Q. Do you have those records with you?

A. I have, sir.

Q. Could I see them?

A. Duplicate and the original.

Q. I hand you plaintiff's Exhibit 8 for identification and [90] ask if you can identify the proposed exhibit?

A. Yes, that is the form we use for the purpose of booking prisoners in our city jail.

Q. To what prisoner does this relate?

A. Ray Lewis Sage.

Q. What is the date of the booking?

A. Has 2-27-'56 at 3:08 p.m.

Q. Is that an official record of the City of Henderson police department?

A. That is correct.

Q. And that record is kept and maintained in the ordinary and regular course of the operations of the Henderson police department?

A. That is right.

Q. And by reason of your office as Chief of that police department, you are charged with the custody of those records, are you not?

(Testimony of George F. Crisler.)

A. That is right.

Mr. Babcock: I offer into evidence plaintiff's Exhibit 8 for identification.

Mr. Watson: On objection by Mr. Pool, your Honor.

Mr. Mattuecci: No objection, your Honor.

The Court: The offer will be received in evidence as government's Exhibit 8.

Q. Chief Crisler, I hand you what has been marked plaintiff's [91] Exhibit 9 for identification and ask if you can identify that proposed exhibit?

Yes, that is a card that we use in our file. It is G L identification card, showing that we have this prisoner in our custody in our city jail. It is a reference card.

Q. Is that an official record of the police department of the City of Henderson?

A. Well, not exactly, sir.

Q. Is that record made in the ordinary and regular course of the operations of the Henderson police department?

A. That is right.

Q. And is that maintained by you as such?

A. Yes.

Q. And by reason as to your office of Chief, you are charged with the custody and responsibility of records of the Henderson police department?

A. That is correct.

Mr. Babcock: I offer Exhibit 9 for identification evidence.

Mr. Watson: No objection, your Honor.

Mr. Mattuecci: I have a question on voir dire.

The Court: You may inquire.

(Testimony of George F. Crisler.)

Voir Dire Examination

By Mr. Mattuecci:

Q. Chief Crisler, on the bottom of this card it says, taken by North Las Vegas 2-28-56 p.m. Can you tell me what time [92] that is?

A. It could be an eight or a nine.

Mr. Matteucci: I have no other questions.

The Court: The offer will be received in evidence as government's No. 9.

Examination Resumed

By Mr. Babcock:

Q. Chief Crisler, I hand you plaintiff's Exhibit 9 in evidence. There are certain notations on this booking card. Who wrote those, if you know?

A. I believe that was written at the time by Don Richards. We had a different setup then than we do now. We had an integrated public safety department file for police work and the men were doing fine work. That has since been abandoned since that time. At that time Don Richards was the officer in charge of the station. He is now our fire chief.

Mr. Babcock: Your Honor, I would like to read to the jury——

Mr. Watson: If the Court please, I am going to object to the offer, what is written being identified that he believes it must have been Don Richards. If he knows of his own knowledge, that is another matter.

The Court: Witnesses have a habit of saying "I

(Testimony of George F. Crisler.)

believe" and "think." Do you know positively the person you have stated in regard to those additions to the card? [93]

A. To the best of my knowledge it is.

The Court: Very well; objection overruled.

Mr. Babcock: I would like to read briefly from this to the jury.

The Court: You may.

Mr. Babcock: On the top of this booking card is written: "No phone calls. No visitors. Maximum security. This one will run if possible." This is booking card of Ray Lewis Sage. Now here, "Arresting officer Carlson." Then there is receiving time by LMD and a figure appears to be either eight or nine p.m. You may inquire.

Mr. Watson: No questions.

### Cross-Examination

By Mr. Matteucci:

Q. Chief Crisler, these are made out at the time the suspect was brought into the Henderson jail, is that correct?

A. As soon as possible, yes, sir.

Q. Will you look at this booking slip and in answer, "Are you in good health?" tell me what is on there please?

A. A check mark.

Q. What are the next words that appear after that?

A. "Nature of illness."

Q. What appears there?

A. Nothing.

Mr. Matteucci: That's all.

Witness excused. [94]

W. ALBERT STEWART, JR.

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Babcock:

Q. Will you state your name, please?

A. W. Albert Stewart, Jr.

Q. You have already been sworn in this matter?

A. Yes, sir.

Q. Where do you reside?

A. Las Vegas, Nevada.

Q. What is your occupation?

A. I am special agent for the Federal Bureau of Investigation.

Q. Where are you based?

A. Las Vegas, Nevada.

Q. How long have you been a special agent of the Federal Bureau of Investigation?

A. Fifteen years.

Q. How long have you been based in Las Vegas, Nevada?

A. Four and one-half years.

Q. Mr. Stewart, I hand you plaintiff's Exhibit 10 for identification, which purports to be a photograph, and I will ask you if you can identify that exhibit?      A. Yes, sir.

Q. What is it?

A. This is a photograph of gravel road known as U. S. Government Wells Access Road. The photograph was taken from the [95] entrance to the



(Testimony of W. Albert Stewart, Jr.)

road from the main highway, which is Highway 91, leading north.

Q. I hand you plaintiff's Exhibit 12 for identification and ask you if you can identify that exhibit?

A. Yes, sir. This is a photograph of the point of turn-off from U. S. Government Wells Access Road, which is approximately 1.8 miles from the turn-off on Highway 91.

Q. I hand you plaintiff's Exhibit 11 for identification and ask you if you can identify that photograph?

A. Yes, sir. This is a continuation of the U. S. Government Wells Access Road from the point 1.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 13 and ask you if you can identify this photograph?

A. This is a photograph that is a further extension of the turn-off point to the entrance, showing the approximate position of the police car at the time of the alleged beating.

Mr. Watson: Your Honor please, the witness was not there when the police car allegedly was there. I don't see how he can testify where the police car was.

The Court: I think that is correct, counsel.

Q. Just identify the photograph.

A. It is a photograph of the further extension of the turn-off point 1.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 14 and ask if you can identify this photograph? [96]

(Testimony of W. Albert Stewart, Jr.)

A. This is a photograph of the extension of the turn-off point 1.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 15 for identification and ask you if you can identify this photograph.

A. This is a further photograph of the extension of the turn-off point 1.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 16 for identification, which is a photograph, and ask you if you can identify that?

A. This is a photograph of the same spot as was in the previous photographs, with the exception that the camera was pointed in a westerly direction, when the previous photographs the camera was pointed in an easterly direction.

Q. I hand you plaintiff's Exhibit 17 for identification and ask you if you can identify that photograph?

A. This is another photograph of the extension of the turn-off point 1.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 18 for identification and ask you if you can identify this photograph?

A. This is another photograph of the extension of the turn-off road 1.8 miles from Highway 91, with the camera pointed east.

Q. I hand you plaintiff's Exhibit 19 for identification and ask you if you can identify that photograph.

A. This is another photograph of the extension

(Testimony of W. Albert Stewart, Jr.)

of the turn-off point 1.8 miles from Highway 91, with the camera pointed north.

Q. I hand you plaintiff's Exhibit 20 for identification and [97] ask you if you can identify this photograph?

A. This is another photograph of the extension of the turn-off point 1.8 miles from Highway 91, with the camera pointed east.

Q. I hand you plaintiff's Exhibit 21 for identification and ask you if you can identify this photograph?

A. This is another photograph of the extension of the turn-off point 1.8 miles from Highway 91, with the camera pointed north.

Q. I hand you plaintiff's Exhibit 22 for identification and ask you if you can identify this photograph?

A. This is a photograph of the extension of the Government Wells Access Road at a point 5.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 23 for identification and ask you if you can identify this photograph?

A. This is a photograph of a road turn-off west from gravel road at a point 5.8 miles from Highway 91.

Q. I hand you plaintiff's Exhibit 24 for identification and ask you if you can identify this photograph.

A. This is a photograph of the sign on the turn-

(Testimony of W. Albert Stewart, Jr.)

off road 5.8 miles from Highway 91 and at a point two-tenths of a mile west of the Government Wells Access Road, with the camera pointed south.

Q. I hand you plaintiff's Exhibit 25 for identification and ask you if you can identify this photograph?

A. This is a photograph of an area south of the turn-off road 5.8 miles from Highway 91, at a point where the road turns [98] from Government Wells Access Road. The camera is pointed south.

Q. Who took these photographs, plaintiff's Exhibits No. 10 for identification to and including plaintiff's Exhibit 25 for identification?

A. They were taken by myself and Special Agent Leslie B. Dieckman.

Q. Who was with you when these photographs were taken?

A. Special Agent Leslie Dieckman.

Q. Who is the person photographed that is in plaintiff's Exhibits 17, 18, 19, 20 for identification?

A. First appearing in the photograph is Special Agent L. B. Dieckman.

Q. There appears to be a legend written on the reverse side of each and every of the exhibits, plaintiff's 10 for identification through plaintiff's Exhibit No. 25 for identification. In whose handwriting are these respective legends?

A. My handwriting.

Q. Do these photographs, plaintiff's Exhibit 10 for identification, to and including No. 25 for identi-

(Testimony of W. Albert Stewart, Jr.)

fication, accurately portray the view contained therein?

Mr. Watson: Your Honor, we object. There is not sufficient foundation laid for the introduction in evidence at this time.

Mr. Babcock: I am not making the offer at this time.

The Court: There is no offer. Objection overruled. [99]

Mr. Babcock: Would you read the question please?

(Question read.)

A. Yes, sir.

Q. On what date were these photographs taken; that is, plaintiff's Exhibits 10 through 25 for identification?

A. June 21, 1956.

Mr. Babcock: You may inquire.

Mr. Watson: No questions.

Mr. Matteucci: No questions, your Honor.

(Witness excused.)

COITE M. GAITHER, JR.

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Babcock:

Q. Will you state your name, sir?

A. Coite M. Gaither, Jr.

Q. Where do you reside, Mr. Gaither?

A. I live at Apartment 2, Paradise Road.



(Testimony of Coite M. Gaither, Jr.)

Q. Las Vegas, Clark County, Nevada?

A. Yes, sir.

Q. How long have you made Las Vegas, Nevada, your home?

A. Since February 20th of this year.

Q. Mr. Gaither, on February 27, 1956, where was your permanent residence?

A. Apartment 15 Grande Court, North Las Vegas.

Q. Have you ever resided in North Carolina?

A. Yes, sir; I lived in Charlotte, North Carolina, that is where my family is.

Q. At or about this time of what State were you an inhabitant?

A. February 27, 1956, I lived here.

Q. You are a citizen of what country?

A. United States of America.

Q. What is your age?

A. Twenty-eight years old.

Q. When were you born?

A. April 5, 1929.

Q. Mr. Gaither, on or about February 27, 1956, were you picked up by a police officer or officers?

A. Two police officers.

Q. Do you know from what city?

A. North Las Vegas.

Q. And where were you picked up?

A. In my apartment, sir, Apartment 15, Grande Court, North Las Vegas.

Q. About what time of day was that, do you recall?

(Testimony of Coite M. Gaither, Jr.)

A. I would say between 10:30 and 11:30, sir.

Q. Under what circumstances were you picked up by those two officers?

A. That they did not tell me.

Q. What did they do?

A. Well, I was in my apartment. They walked in. [101]

Q. Do you know who the officers were?

A. No, sir; the only thing I know they had on police uniforms.

Q. Did you have a conversation?

A. They asked me where I was born.

Q. Just did you have a conversation, yes or no.

A. I wouldn't call it a conversation, sir.

Q. Then what happened after the two officers came to your residence?

A. Well, I was putting on a pair of shorts, I believe, sir, and they said, "Where are you going?"

Q. No conversation, just what did you do?

A. They made me sit in a chair.

Q. Then what did you do?

A. I sat in the chair until they took me up.

Q. How long was that?

A. Twenty to twenty-five minutes.

Q. Were you placed under arrest at that time?

A. They did not tell me I was under arrest.

Q. Then what happened?

A. They took me to the North Las Vegas police department.

Q. Do you recall about what time it was that you arrived there, if you know, can recall?

(Testimony of Coite M. Gaither, Jr.)

A. I would say eleven to eleven-thirty.

Q. What happened with you arrived at the North Las Vegas police department? [102]

A. Chief Pool questioned me.

Q. Where did they question you?

A. Chief Pool's office.

Q. Was any one else present other than those you have named, if you can recall?

A. There was either one or two ladies in the outer office there and there was, I think, a sergeant of the North Las Vegas police department.

Q. How long did this interrogation take?

A. About fifteen or twenty minutes.

Q. What was said and what was done during that interrogation?

A. They asked me if I want to come clean.

Q. Who asked you that, if you recall?

A. I think it was Chief Pool.

Q. Come clean about what?

A. They didn't say for what. They just asked me if I want to come clean and I said, "I don't know what you are talking about."

Q. What else was said or done during that interrogation?

A. They asked me about a couple of burglaries. I said, "I don't know what you are talking about," and then they says: "You didn't get home until 5:30 or 6:00 o'clock this morning." I said, "Well, I rode to town to see about some money my father was supposed to send me, with Ray Sage." There was two cars in front of the police station. They

(Testimony of Coite M. Gaither, Jr.)

say, "Sit in one, on the left-hand side." Before I had a chance to say anything. I [103] said, "Ray, you remember we rode to town early this morning to see about money my father was supposed to send me." I think he said yes, but I do not recall whether he said yes or not, and then I got in the Ford back seat.

Q. Why was it you were outside the police department at that time?

A. They carried me out there.

Q. Escorted you or carried you, or what?

A. They walked behind me.

Q. Who was that? A. Mr. Carlson.

Q. And for what reason, if you know?

A. They wanted to confront me with Sage, I would imagine because he didn't tell them that we had taken a ride to town.

Q. And then after this conversation with Sage, concerning the ride downtown, what next happened?

A. They put me in the back seat of the Ford.

Q. Who is they?

A. Well, not they; Mr. Carlson put me in the back seat.

Q. Who else, if any one, got in the car at that time? A. No one.

Q. Were you in that car alone?

A. He put the handcuffs on me when I got in the car.

Q. Who put handcuffs on you?

A. Mr. Carlson. [104]

Q. Were you handcuffed with your hands in

(Testimony of Coite M. Gaither, Jr.)

front or behind you?           A. Behind me, sir.

Q. How long did you remain in the car?

A. I would say three to five minutes. It wasn't but a very few minutes.

Q. Then what next happened?

A. He was going to take me back inside the police department and I sat in Chief Pool's office.

Q. Did you have a conversation with any officers after you returned from the car?

A. No, sir. He just told——

Q. Who is "he"?

A. Mr. Carlson; he just told this officer to watch me, that's all.

Q. How long were you in the police station at that time?

A. I would say probably an hour or hour and a half.

Q. Were you interrogated during that period of time by any one?           A. No, sir.

Q. Where were you seated?

A. Chief Pool's office.

Q. Then what next happened, after you were in the office about an hour and a half, as you testified?

A. Well, Chief Pool and Mr. Carlson come back and then they started asking me about the burglaries again. [105]

Q. What officers?

A. Chief Pool, Mr. Carlson.

Q. Will you state what the conversation was, or the interrogation was, and what you responded?



(Testimony of Coite M. Gaither, Jr.)

A. They said, "We have the car tracks," and he said, "We made an imprint of it." He said, "It is the same car." He said, "Come clean with us," and again I told him I didn't know what he is talking about.

Q. How long were you interrogated at that period?

A. Not very long. I say twenty or thirty minutes.

Q. What did the interrogation generally consist of?

A. He just wanted me to tell him that I committed the burglaries, sir.

Q. After that interrogation, what next happened?

A. They put me in the back seat of the car.

Q. Who is "they"?

A. Chief Pool, Mr. Carlson. Mr. Carlson sat in the back seat, Chief Pool was driving, I was in the back seat with Mr. Carlson. We went out to Nellis Boulevard—

Q. Were you under restraint at that time or not?

A. Do you mean did I have handcuffs on?

Q. Yes. A. Yes, sir.

Q. How were you handcuffed?

A. My hands behind me. [106]

Q. After you got into the car, what then happened?

A. They started out Nellis Boulevard. They went four or five miles on Nellis Boulevard, took a left turn on a dirt road at that time.

(Testimony of Coite M. Gaither, Jr.)

Q. Were you able to observe your travel, what road you were on?

A. Yes, sir. I remember the filling station where they took a left turn.

Q. And then after you took a left turn, where did you proceed?

A. We went about a mile, maybe a mile and a half, and we take a right, then we go about forty yards off the road, I would say.

Q. Were you able to observe your travel in this period of time?

A. Yes, sir; I was watching it.

Q. Then what happened, after you made this turn off and drove another forty yards, as you say?

A. Chief Pool got out of the car; Carlson got out of the car, pulled me out of the car.

Q. Who pulled you out of the car?

A. Carlson. He was in the back seat with me.

Q. Then what happened?

A. They asked me then did I want to come clean. I said, "I still don't know what you are talking about." Then they started striking on me with their fists.

Q. Who is they?

A. Chief Pool, Mr. Carlson. [107]

Q. Where were you at that time?

A. I was standing at the rear door of the Ford.

Q. Who struck you first, if you recall?

A. I am sorry, I don't recall.

Q. Will you explain the manner in which you were struck?

(Testimony of Coite M. Gaither, Jr.)

A. Well, I was hit in the stomach first. For a while I kept going up against the car and they kept hitting me in the stomach and finally I go down and then they give me a judo shot around the shoulder and neck.

Q. Who gave you a judo shot?

A. That I don't know, sir. While I was down I felt a couple of kicks right at the end of my spine and I was kicked in the chest a couple of times, I don't know how many times; I say two, maybe three, maybe four, I don't know.

Q. On the chest?           A. Yes, sir.

Q. How many times were you struck to the area of your stomach, if you know, can recall?

A. That is pretty hard to say. I know it was quite a few times.

Q. Did you observe if Chief Pool struck you at or about that time?

A. Well, it was both of them at the same time.

Q. Did you say they both struck you?

A. I felt them both strike me and I seen them both strike me. [108]

Q. How long were you in this area, some forty yards off the dirt road?

A. About an hour and fifteen minutes, maybe an hour and a half.

Q. Was there a conversation there with the two officers at that time?

A. Yes; they all wanted me to come clean and I didn't say nothing, so they kept working on me.

Q. At any time while you were in physical cus-

(Testimony of Coite M. Gaither, Jr.)

tody of officers of the North Las Vegas police department on that day, did you offer any resistance?

A. I did not, sir.

Q. Did you fight back or engage in any physical altercation with any police officer of the North Las Vegas police department on that day?

A. No, sir; my hands were behind me.

Q. At the time of these beatings, were you handcuffed at all times?

A. My hands were behind my back with cuffs on them the whole time.

Q. How many times did you fall to the ground, if you recall?

A. Must have been six or eight times.

Q. During that period of time, did you make any admissions to either Officer Pool or Officer Carlson?

A. No, sir. I told them I didn't know nothing about it because I only got half of the sentences out. [109]

Q. What kind of language was used by Officer Pool and Officer Carlson?

A. I wouldn't say for sure, but I am fairly sure one of them said, "We will beat this punk till he coughs up."

Q. Were there any vulgarities used by either officer in the course of the interrogation?

Mr. Watson: If the Court please, I think he is leading the witness here and in the preceding question the witness answered he wasn't sure of any statement. I ask that this witness be sure or the answer be stricken.

(Testimony of Coite M. Gaither, Jr.)

The Court: Objection overruled. Proceed.

Q. Were there any vulgarities used by either of these officers during the beatings, as you have described it?

A. They called me a g. d. punk, son-of-a-bitch, something like that. That was used several times, as I recall.

Q. As I recall your testimony, you were there approximately an hour and a half, is that correct?

A. I would say between an hour and an hour and a half.

Q. Then what happened?

A. They put me back in the car and took me back to North Las Vegas.

Q. What route did you take?

A. The same way I come out.

Q. About what time of day was it that you returned to the North Las Vegas police [110] department?

A. I guess around 2:00 o'clock, two thirty.

Q. In the afternoon? A. Yes, sir.

Q. It was daylight? A. Yes, sir.

Q. And upon your arrival at the North Las Vegas police department, who was there?

A. Chief Pool and Mr. Carlson.

Q. Then what happened?

A. They took me inside and sat me down in the office where the calls come in, right in Chief Pool's office.

Q. How long were you seated there?

A. Half an hour, maybe forty-five minutes.



(Testimony of Coite M. Gaither, Jr.)

Q. Were you interrogated during that period of time by any one?

A. I wasn't interrogated. Captain Clifton made a statement to me.

Q. What did he say?

A. He says, "I wish you could run so I might shoot your God damn frame down."

Mr. Watson: If the Court please, it is not shown that Mr. Pool was present when this remark was made; I consider it highly prejudicial to Mr. Pool and ask it be stricken.

The Court: Have a better foundation.

Q. Who was present, if any one? [111]

A. A girl. I didn't know her name at the time but I just found out yesterday she was Chief Pool's wife.

Q. Who else was present?

A. Captain Clifton in that office.

Q. Chief Pool was not there, is that correct?

A. He was in his office, sir.

Q. But not in the room?                      A. No, sir.

Mr. Watson: Defendant Pool renews again his objection.

The Court: The objection will be sustained and the answers of this defendant relative to the statement made by Captain Clifton to him is stricken from the record and, ladies and gentlemen of the jury, the Court advises you when the Court directs anything be stricken from the record, you must consider it as though it had never been said and wipe

(Testimony of Coite M. Gaither, Jr.)

the entire recollection of it from your mind and not consider it.

Q. What next happened after you were seated in this room?

A. They took me to the Las Vegas police department.

Q. Who took you there?

(Jury admonished and morning recess taken at 11:00 until 11:15.)

11:15 A.M.

(Defendants present with their respective counsel and [112] government counsel present. Presence of the jurors and alternate juror stipulated.)

MR. GAITHER

resumes the witness stand on continued

Direct Examination

By Mr. Babcock:

Q. Mr. Gaither, at the point of the recess, I believe you had testified that you were then taken to the Las Vegas city jail, is that correct?

A. Yes, sir.

Q. Without relating any conversation, what happened to you there?      A. They put me in jail.

Q. Who escorted you there?

A. One of the policemen, I guess. He had a uniform on. Mr. Carlson, as I recall.

(Testimony of Coite M. Gaither, Jr.)

Q. What time of day was that?

A. I would say three to three thirty, maybe four.

Q. How long did you remain in the Las Vegas city jail?

A. Well, around eight o'clock.

Q. Then what happened?

A. They carried me back to North Las Vegas.

Q. Who was they?

A. I think Carlson, patrolman by the name of Fisher and Mr. Al Ferguson.

Q. Where did you go then?

A. To the North Las Vegas police [113] department.

Q. At the time you were admitted to the Las Vegas city jail, did you make any complaint to any officer then on duty?

A. I asked the nurse for some pills. She said, "What's wrong?"

Q. Don't relate any conversation. What kind of medicine?

A. Any kind to give me some relief.

Q. Relief from what?

A. My stomach. I had ulcers.

Q. What kind of pills were given you?

A. She told me they were peanut barbital.

Mr. Watson: The fact that the witness requested medication for stomach ulcers cannot prove anything in issue relative to the case. We ask it be stricken.

The Court: The answer may go out.

Q. What was your physical condition at the time

(Testimony of Coite M. Gaither, Jr.)

you were admitted to the Las Vegas city jail? How did you feel physically?

A. I felt like I never felt before.

Q. How was that?

A. I was hurting pretty bad.

Q. Where?

A. My stomach, my neck, my head and my shoulders.

Q. About eight o'clock, I believe your testimony is, that you were then taken back to the North Las Vegas police department, is that correct?

A. Yes, sir.

Q. What happened when you arrived there? Don't relate any [114] conversation, just tell me what happened. Where were you taken?

A. In Chief Pool's office.

Q. Did you have a conversation at that time with any one, yes or no? A. Yes, sir.

Q. Who was present?

A. Chief Pool, Clifton, Carlson, Barbara Farola, Frank Farola.

Q. What was said or done at that time?

A. He showed me the sack full of change.

Q. Who showed you that? A. Chief Pool.

Q. Continue.

A. He asked me did I recognize it. I said no. He asked me did I want to see these pieces of paper.

Q. Who asked you that? A. Chief Pool.

Q. What did you say?

A. He shoved the papers in front of me. I read the papers and I said, "What do you want to

(Testimony of Coite M. Gaither, Jr.)

know?" He said, "Tell me all about it." That is when I told him.

Q. What did you tell him?

A. I told him that we went into the Foodland Market and attempted to go into the Valley Market. I told him we also went into the Little Giant Market. That is all I told him at [115] that time.

Q. Then what was said or done at that time?

A. He said, "Tell me about the rest of them."

Q. Who is he? A. Chief Pool.

Q. What was your response?

A. I said, "There are no more."

Q. Did you have any further conversation with those people present you testified to?

A. He asked me where the slot machines were. I told him I would show him. So there was some more talk, I don't remember exactly what it was. He asked me—I remember this—he asked me where the crowbar was. I says, "It is out on a road in a field." So Clifton, I and Carlson, I am pretty sure, road out on that road and looked for that crowbar. We couldn't find the crowbar. They brought me back. Went back to the police station and Pool—I think it was Carlson—put me in a car and took me up on Sunrise Mountain, where I told them the slot machines were. We got the slot machines, picked up some change on the ground, come back into town to the police department.

Q. What happened when you then returned to the police department?



(Testimony of Coite M. Gaither, Jr.)

A. They let me alone for a few minutes. I told them I was sick.

Q. Where was this? [116]

A. When he took me for the crowbar.

Q. Did you get out of the car at any time on that road?

A. Yes, sir; when I up-heaved I got out of the car. I stuck my head out of the car. I didn't get all the way out of the car.

Q. The car was stopped for you?

A. Yes, sir; they stopped when they found out I was sick.

Q. Then you returned to the department, is that correct?      A. Yes, sir.

Q. And what happened on your return? First of all, about what time of day or night was it?

A. Which time are you talking about?

Q. The time you came back after you were sick on the road.      A. Probably nine thirty.

Q. About what time was it that you returned from your search for the slot machines?

A. Maybe ten or ten fifteen.

Q. Upon your return from your search for the slot machines, what is the next thing that happened, if you recall?

A. He said, "Are you ready to tell me?" I said, "I don't know any more to tell you." He said, "Do you want to go for another ride?" I said, "No, sir. Chief Pool, I have told you all I know." So he come back to me where the rest of the slot machines were. I think he said the 101 Club, the Rustic Inn and

(Testimony of Coite M. Gaither, Jr.)

about four or six other places. I said, "No, sir, I didn't [117] go to any of those places. He kept questioning me and questioning me, so I told him that we went in the Lincoln Market, which he did not know about. He didn't know about the Buzzers Market. I admitted I went into those two places. He said, "Tell me about the 101 Club and the Rustic Inn," maybe four, maybe six other places. I closed my mouth. I said, "Chief Pool, I don't know those places." He said, "You are lying to me." I said, "I am not lying, sir." Then again he asked me, he said, "You are sure you don't want to go on a ride?" I said, "Chief Pool, I have told you everything I know." So then we go across the street.

Q. Who is "we"?

A. Right now it was Chief Pool and Carlson, I believe that's all. We go into the club right on the corner, just about directly across the street from the North Las Vegas police department.

Q. What did you do there?

A. They had dinner and I had a couple of bowls of tomato soup. I went to the rest room and regurgitated again. I drank some water; they finished their dinner, paid the check, come back across the street to the police department. Then he kept questioning me about the other places.

Q. Who did?

A. Pool and Clifton. I told them both, I said, "I told you all I know." I said, "I don't know any more. What do you want [118] me to do?" They said, "Well, we want to know where the rest of the

(Testimony of Coite M. Gaither, Jr.)

slot machines are." I said, "I only know the ones that I took you to." I said, "The one we got out of the Little Giant Market is out in the city dump, I believe." So he said, "Well, we can't find it tonight, we will get it tomorrow." I said, "all right, sir." He said, "Now tell me where the rest of them are." I said, "There are no more." So it went on like that for maybe half an hour, maybe an hour, I don't know exactly. I wasn't feeling too well at the time.

Q. Why weren't you feeling too well at the time?

A. I was still sick. So he made out a confession.

Q. Who made out a confession?

A. He told us later what to write.

The Court: Who do you mean by "he," Chief Pool?

A. Yes, sir.

Q. Where did this take place?

A. They call it a courtroom, not in Pool's office. It was directly behind Pool's office.

Q. Who was present?

A. Pool was there and a lady that took the statement. I made one statement in there and I think I made one out in his office.

Q. The statement referred to what?

A. My confession, that I committed the burglaries.

Q. The burglaries that you have testified to?

A. Yes, sir. That was all. He wanted me to admit the rest of [119] the burglaries, so he could get them off his books, he says. I said, "Chief Pool, you can

(Testimony of Coite M. Gaither, Jr.)

beat me until the end of time, I am not going to admit anything I did not do." So I signed a statement that I did what I told them before. That was all.

Q. Were these statements in your handwriting, if you recall?

A. The lady took the statement.

Q. How did she take the statement?

A. If I am not mistaken, she took the statement in shorthand, typed it up and I signed it.

Q. After you signed the statement, what next happened?

A. They took me back to the Las Vegas police department.

Q. At any time thereafter did you return to the North Las Vegas police department?

A. Not after that. Yes, sir, the next morning. I didn't return after the next morning.

Q. What happened the following morning?

A. They took I and Sage——

Q. Now, don't relate any conversation, just what did you do with those others?

A. I took them to the city dump to try to find the slot machines. We walked to the city dump, I think twice. We didn't find the machine.

Q. Then what next happened?

A. They carried me back to the Las Vegas police department.

Q. Then what happened? [120]

A. Carried me back to the city jail, then the county jail.

(Testimony of Coite M. Gaither, Jr.)

Q. What county? A. Clark County, sir.

Q. Were you later charged with a felony?

A. Burglary, yes, sir.

Q. Did you enter a plea to that charge?

A. Guilty. I signed a confession.

Q. And then what happened to you?

A. Well, I stayed in jail a couple of days and somebody told somebody that——

Q. Don't relate any conversation. Were you thereafter incarcerated at the Nevada State prison?

A. Did I leave for the Nevada State prison?

Q. Yes, and did you serve time there?

A. I served ten months there.

Q. Could you identify Chief William Cecil Pool?

A. Yes, sir.

Q. Is he in this courtroom?

A. He is sitting right at the end of your table.

Q. Did you see him at a point approximately forty yards off a dirt road that you have previously testified to? A. He was there with me, yes.

Mr. Babcock: You may inquire.

### Cross-Examination

By Mr. Watson:

Q. Mr. Gaither, you say you were knocked down a number of [121] times by Detective Carlson and Chief Pool, is that right?

A. That is exactly right, sir.

Q. All this was going on say between one and two o'clock in the afternoon, is that right, your best guess?



(Testimony of Coite M. Gaither, Jr.)

A. That is the approximate time. I wouldn't swear to that.

Q. When you were knocked down, your hands cuffed behind you, by what means did you get up?

A. Mr. Carlson picked me up.

Q. Mr. Carlson picked you up?

A. That is right.

Q. And then one or the other then knocked you down again? A. Yes, sir.

Q. Now, when you were taken into the station that morning, Mr. Gaither, I believe you were wearing a dark blue suit, or a similar one that you have on, and a clean white shirt and a necktie, weren't you? A. I didn't have on a suit, sir.

Q. Did you have on a clean white shirt?

A. I think so, yes.

Q. A necktie? A. Yes.

Q. And you had some fairly nice dark blue pants that belonged to a suit, didn't you?

A. I had on these pants right here.

Q. The very pants you are wearing now? [122]

A. That's right.

Q. In other words, you were dressed as you are now, except for the coat, is that correct?

A. Yes; I think I had on a black coat.

Q. You had on a black coat?

A. I think, I am not sure.

Q. Now, after having been struck a number of times—by the way, none of these blows were above the neck—there were no blows on the face?

A. I wasn't hit in the face.

(Testimony of Coite M. Gaither, Jr.)

Q. All on the body?      A. Yes, sir.

Q. After being struck a number of times and knocked down on the ground in the desert, it was sandy ground, wasn't it?

A. I would say it was gravel.

Q. Pardon?

A. I would say it had a lot of gravel.

Q. Was it regular southern Nevada desert soil, sand and dust and gravel?

A. Yes; it is out in the desert.

Q. After being knocked down a number of times and picked up each time by Mr. Carlson—

A. I wasn't picked up each time by Mr. Carlson. Sometimes I would only go down to one knee and I would come up by myself.

Q. And sometimes Mr. Carlson picked you [123] up?      A. A couple of times, I believe.

Q. Did you have a lot of sand and dirt all over those nice blue pants you were wearing, white clean shirt, and your necktie?

A. I think I had quite a bit of dust on my pants.

Q. How about your clean white shirt?

A. It was messed up, I think.

Q. Was it dirty outside from having fallen on the ground?

A. I didn't go all the way on my face.

Q. You never did go completely down?

A. I never went straight out.

Q. Did you ever touch your face to the ground when you fell?

(Testimony of Coite M. Gaither, Jr.)

A. Sometimes I would go all the way down like this.

Q. Will you do that again, please?

A. Sometimes I go all the way down like this.

Q. But never all the way forward on your chest?

A. No, sir.

Q. And you were never knocked back?

A. I was knocked back against the car.

Q. But not back on the ground?

A. No, sir.

Q. And how about your necktie, did it stay fresh and clean?

A. It could have stayed fresh and clean, but I do not remember.

Q. Was your face dirty? [124]

A. Probably had some dust on it.

Q. Do you know?           A. I don't recall, sir.

Q. You told us when you went into the station that you spent most of your time there in one of the two rooms they had in those days in the North Las Vegas police station, where the desk sergeant was, is that right? You saw the desk sergeant there, didn't you?

A. I stayed mostly in Chief Pool's office.

Q. Was Chief Pool's office closed off completely from the other room, or was it just a corner?

A. Chief Pool's desk was here, it run a long ways, and there was a desk here.

Q. Did any wall separate it from the place the sergeant was? It wasn't two separate rooms?

A. Yes, sir; it was two separate rooms.

(Testimony of Coite M. Gaither, Jr.)

Q. But part of the time you were in there with the desk sergeant, weren't you?

A. I wouldn't know part of the time.

Q. But specifically, didn't you go into that room after you got back from taking the trip which you told us about with Mr. Pool and Mr. Carlson?

A. I sat right there outside Chief Pool's room, in a chair.

Q. And right where the desk sergeant could see you, is that right? This is when you came back from your trip that you [125] told us about out on the desert.

A. If he was in there, he could see me.

Q. And then you went to the Las Vegas city jail that afternoon and that evening you told us that Mr. Carlson, Victor Carlson and Dan Fisher and Police Commissioner Al Ferguson came by and picked you up at the jail, is that right?

A. Yes, sir.

Q. And it was those three men that took you back to North Las Vegas?

A. Yes, sir; they took me back to North Las Vegas police department.

Q. And except for the time when you and Chief Pool and Detective Carlson took your trip up to Sunrise Mountain, Police Commissioner Ferguson was there in the office with you all the time, wasn't he? I will put it another way: He didn't just take you there and drop you off and go home, did he?

Q. You mean when he brought me from the Las Vegas city jail at night?

(Testimony of Coite M. Gaither, Jr.)

A. Yes, Mr. Gaither. He came on in the station, too, didn't he?

A. I wouldn't say for sure, but I think so.

Q. And although he didn't go with you to Sunrise Mountain, he did go with you over to the Oxford Club across the street, where you had your tomato soup, isn't that right?

A. All I remember is Chief Pool and Carlson. He could have been there, I don't remember. [126]

Q. Now, you have told us you know Mr. Ferguson? A. I didn't know him at that time.

Q. But you know now who he is? A. Yes.

Q. And you know he is one of the ones who picked you up at the jail? A. Yes, sir.

Q. Now, if Mr. Ferguson, the police commissioner, had spent the entire evening there at the station with you, except for the time you went out to Sunrise Mountain for the slot machines, don't you think you would remember it?

A. I would say in the condition I was in I wouldn't remember whether he was there or not. All I was answering Chief Pool's questions and Clifton's.

Q. Isn't it a fact, Mr. Gaither, that over at the Oxford Club, it was Mr. Ferguson who told you he was treating you and asked you to have a steak?

A. I think Chief Pool asked me to have a steak.

Q. Regardless of who asked you to have a steak, didn't you answer you couldn't hold anything on your stomach because you and Ray Sage had been



(Testimony of Coite M. Gaither, Jr.)

on a three- or four-day bat, as you expressed it?

Didn't you say that?

A. I could have said that.

Q. And you had been on a three- or four-day bat?

A. Yes; we had been drinking. [127]

Q. And you had stomach ulcers?

A. Yes; I have stomach ulcers.

Q. And that is the reason you were sick all the time, the reason you threw up on the way back from Sunrise Mountain, isn't it?

A. You are very wrong.

Q. All right, tell us.

A. Because that man and the other man beat me in my stomach, that is the reason I got sick.

The Court: At that point, who do you mean by that man and the other man?

A. Chief Pool and Mr. Carlson.

Q. Mr. Ferguson, over at the Oxford Club, even kidded you about how high you had been living, isn't that right, he joked about it?

A. He may have, I don't know.

Q. Now, as a result of this beating that Detective Carlson and Chief Pool gave you, as you say, did you make any complaint to Police Commissioner Ferguson when he came by to pick you up that evening?

A. I wasn't going to make a complaint with Carlson and Fisher there.

Q. Would you have otherwise?

A. If I thought I could have trusted that man, I might have.

(Testimony of Coite M. Gaither, Jr.)

Q. But you showed nobody at the North Las Vegas police station [128] any bruises that you had?

A. No, sir; I did not.

Q. You did not really have any bruises, did you?

A. I had a few right up in here.

Q. Heavy ones? A. Pretty heavy.

Q. Did you ever see a doctor about them?

A. No, sir; I didn't.

Q. What people saw the bruises that you had as a result of this beating?

A. Well, the boys in the county jail.

Q. Just the boys in the county jail, is that right? You didn't show your bruises, for instance, to the nurse that you got the stomach ulcer pills from?

A. No, sir; I didn't even tell her I had bruises. And I didn't know they were stomach ulcer pills. All she gave me was something for relief.

Q. You explained you had stomach ulcers when you asked for them?

A. That is what I told her. I said I got trouble with my stomach. I don't know whether I said ulcers or not.

Q. By the boys at the jail, you mean fellow prisoners?

A. Who were all there with me in jail.

Q. They are the only ones who ever saw these bruises you had on your chest, is that right? [129]

A. After a couple of days I think Lieutenant Roberts and Sheriff Leypoldt called me up in the office.

Q. Sheriff Leypoldt and Lieutenant Roberts?

(Testimony of Coite M. Gaither, Jr.)

A. Called both of us up.

Q. Did you show those gentlemen those bruises at that time?

A. They made me take off my shirt.

Q. Did you show them your bruises at that time? Did they see these bruises?

A. Yes, sir. They were going away but could still see them.

Q. Already going away two days later?

A. No, sir. I stayed in the Las Vegas city jail two or three days and then I was in the county jail two or three, maybe four days, maybe longer than that. I imagine they have it on the record, if you would like to check.

Q. How long was it after this beating that you told us about that you actually showed the sheriff your bruises?

A. That I can't say because I don't know; maybe five days, maybe seven days, I don't know.

Q. Isn't it true, Mr. Gaither, that you were shown this sack full of change in the presence of Commissioner Ferguson and it was at that time you said, "Well, you have the goods on me, I might as well tell you what I know"?

A. I don't know whether Mr. Ferguson was there or not. Chief Pool showed me the sack with the change in it and I said, "What do you [130] want?"

Q. And it was then that you said, "All right, you got me, what do you want?"

(Testimony of Coite M. Gaither, Jr.)

A. I don't know whether I said "you got me" or not. I said, "What do you want to know?"

Q. That extra two and one-half hours or more that you told us about interrogation and the conversation about Mr. Pool taking you for a ride again, that really didn't happen, did it?

A. If it didn't, I must be crazy, and I am a very sane man.

Q. That didn't really happen though?

A. That happened. If it didn't happen, I wouldn't tell you that.

Q. And the whole time you were at the North Las Vegas police station during that evening was at least three hours, is that right?

A. I don't know. I don't even know what time I left the city jail. I imagine around eight o'clock.

Q. And about what time did you get back?

A. I imagine eleven thirty to twelve, maybe one, maybe two.

Mr. Watson: That is all.

### Cross-Examination

By Mr. Matteucci:

Q. You say you left the city jail about eight p.m., is that correct?

A. That is the time I would say. That is my imagination.

Q. That is the time you believe you left the city jail? A. That is the time, I believe. [131]

Q. And after you left you went to the North Las

(Testimony of Coite M. Gaither, Jr.)

Vegas police department and then Carlson and Captain Clifton took you out to look for a crowbar, is that correct?

A. Yes; they took me to look for the crowbar.

Q. That was about 9:30 or 10:00 o'clock?

A. It wasn't too long after I got there.

Q. Then when you came back Chief Pool is supposed to have threatened you, is that correct?

A. He kept asking me to tell him where the rest of the slot machines were and tell the other places I broke into.

Q. That was at least after 10:00 o'clock that evening, is that right?

A. I wouldn't say because I don't know.

Q. It was in the vicinity of ten p.m., anyway?

A. I would say it might be nine fifteen to nine thirty. I am not exactly sure.

Q. It was around nine fifteen or nine thirty?

A. That is my belief.

Q. Then a stenographer and you were placed in the back room of the police station and she dictated a statement to you, is that correct?

A. That is the way I remember, sir; Chief Pool dictated a statement—I think he kept asking me a couple of times, he said, "Is this right?" I said, "Yes."

Q. Then it was typed up and you signed it, is that right? [132]

A. I believe that is the way it was.

Q. You would say that was at least around ten p.m. that evening?



(Testimony of Coite M. Gaither, Jr.)

A. I would say it was around ten, I think.

Mr. Mattuecci: That's all.

(Jury admonished and noon recess taken at 12:00 noon.)

1:30 P.M.

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.)

Mr. Babcock: If your Honor please, the plaintiff at this time moves the Court for an order allowing the plaintiff to reopen with direct examination of this witness, for the limited purpose of his identification of certain proposed exhibits.

The Court: Any objection?

Mr. Watson: No objection, your Honor.

The Court: The request of the government is granted and it is allowed to reopen the case on direct examination of this witness for the special purpose only.

MR. GAITHER

resumes the witness stand on

Direct Examination

By Mr. Babcock:

Q. Mr. Gaither, I hand you plaintiff's Exhibit No. 10 through plaintiff's Exhibit 21 for identification. I will ask you to study those photographs and then I will ask you if you can [133] identify any of

(Testimony of Coite M. Gaither, Jr.)

those photographs. Have you had an opportunity to examine the photographs?

A. Yes; I think so.

Q. Would you hand to me any photographs that you can identify? You have handed me plaintiff's Exhibit 21 for identification. Can you identify this photograph? Yes or no.

A. Yes.

Q. What is it?

A. It is a spot——

Mr. Watson: Your Honor, these photographs were first proposed by the agent of the Federal Bureau of Investigation. He testified the people present in those pictures, which were taken in June, were himself and another agent. How can this witness testify and identify these pictures?

The Court: He can't identify the pictures, but he can identify the object that is represented in the picture. You may proceed.

A. The right-hand side of this picture looks like the hill or mountain which they went behind after they took off the road.

Q. How many feet or yards did you go down?

A. When we turned off from Nellis Air Force Base?

Q. Yes.

A. I would say around a mile.

Q. And you state a turn-off is represented in this picture. From what road is that? [134]

A. I don't know the name of the road, but it takes left off of Nellis Boulevard.

Q. Were you in or out of the automobile at this particular place represented in this proposed Exhibit 21?

A. I was in and out.

(Testimony of Coite M. Gaither, Jr.)

Q. Are there any other proposed exhibits that have been handed you that you can identify?

A. This looks like practically the same one.

Q. You are referring to plaintiff's Exhibit No. 20?

A. Yes, sir.

Q. Do you recognize having been there before, in that immediate vicinity?

A. It looks like it to me, sir.

Q. When and under what circumstances?

A. When Chief Pool and Mr. Carlson took me out.

Q. Are there any other photographs that you can identify?

A. This looks like the road that you take a left off of Nellis Boulevard.

Q. Referring to plaintiff's Exhibit 19. Are there any other photographs?

A. I been here.

Q. Now, referring to plaintiff's Exhibit 18. What does that represent?

A. That looks like the exact place Chief Pool and Mr. Carlson took me. [135]

Q. Are there any other photographs that you can identify?

A. This is the exact place.

Q. You are referring to plaintiff's Exhibit 16. The exact place of what?

A. That Chief Pool and Carlson took me. This is the exact place.

Q. You are referring to plaintiff's Exhibit No. 15 for identification. The exact place of what?

A. Where Chief Pool and Carlson took me. This

(Testimony of Coite M. Gaither, Jr.)

looks like the same place. It is a little bit different picture.

Q. You are referring to plaintiff's Exhibit 14 for identification?

A. Yes. This is the road that leads off Nellis Air Force Boulevard.

Q. You are referring to plaintiff's Exhibit 10?

A. Yes, sir.

Q. Did you travel this road on February 27, 1956?

A. Yes, sir.

Q. In whose company?

A. Chief Pool and Mr. Carlson. This is the place.

Q. You are referring to plaintiff's Exhibit 13. Do you identify this proposed exhibit?

A. Yes, sir; I do.

Q. What is it?

A. That is the place where Chief Pool and Carlson took me. [136] I can't see the mountain in this picture here, but it looks like to me this is the road. The mountain should sit right over here, up a little bit. That is where you take a right, about forty yards off the highway.

Q. You are referring to plaintiff's Exhibit 12 for identification, is that right?

A. Yes, sir. This also looks like the road that you take a left off Nellis Air Force Boulevard.

Q. You are referring to plaintiff's Exhibit 11 for identification?

A. Yes, sir. This looks like the exact place I was beaten.

Q. You are referring to plaintiff's Exhibit 17

(Testimony of Coite M. Gaither, Jr.)

for identification, is that correct? A. Yes.

Mr. Babcock: You may inquire.

Cross-Examination

By Mr. Watson:

Mr. Watson: I understand, counsel, you are not now offering them?

Mr. Babcock: No.

Mr. Watson: No questions.

(Witness excused.)

VICTOR L. CARLSON

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Babcock:

Q. Will you state your name? [137]

A. Victor L. Carlson.

Q. Where do you reside?

A. 2504 No. Main Street.

Q. Where, what city?

A. North Las Vegas.

Q. How long have you been a resident of this community? A. Since 1954.

Q. On February 27, 1956, what was your occupation?

A. Detective sergeant, North Las Vegas Police Department.



(Testimony of Victor L. Carlson.)

Q. How long had you been associated with the North Las Vegas police department up to that date?

A. Since December 15, 1955.

Q. Do you know a person by the name of Ray Lewis Sage, Jr.?

A. I do.

Q. Did you have occasion to see him on or about February 27, 1956?

A. I did.

Q. Would you recite the circumstances of that meeting?

A. The early morning of February 27th we had several burglaries in North Las Vegas. I was called to the station early this morning. Lieutenant Miller and myself went to the Foodland Market and to the grocery store on East College, where burglaries had been committed. By the east side of the building of the College Market we saw the tire tracks of a car, a Ford car, knew where the car was parked, so we went to the Grande Court [138] on North Main Street, found the car, the tires were identical, so knowing the car, I knew that Sage had been in this car. I went to Apartment 15, knocked at the door and was told to come in. I opened the door. I saw the man, Jerry Fritzel. I identified myself as a detective from the North Las Vegas police department, and told him to get up and I would take him down to the station. I looked in the bedroom. Lying on the bed was a man by the name of Sage. I woke Sage up and told Sage to come to the police department and before Sage was getting up, I looked at his shoes and he had the same heel prints as I found at the market. I took Sage into the police depart-

(Testimony of Victor L. Carlson.)

ment in my car and Fritzel drove the old Ford to the police department. Danny Fisher——

Q. When you first saw Sage on that morning, how were you dressed?

A. How was I dressed?

Q. Yes. A. Plain clothes.

Q. What kind of a car did you escort or drive Sage down to the station?

A. 1955 light green Ford.

Q. Who was the owner of that automobile?

A. The City of North Las Vegas.

Q. What department of the city made use of that vehicle? A. Police department. [139]

Q. What time did you arrive with Sage at the North Las Vegas police department?

A. Approximately nine thirty in the morning.

Q. Upon arrival what did you do with him?

A. Placed him in the main room, in the old police department, at a table.

Q. Did you remain with him at that time?

A. I talked to Sage approximately twenty minutes.

Q. During this course of conversation was any one else present? A. Just Sage and myself.

Q. After your conversation with Sage of some twenty minutes, what next happened?

A. I went into the radio room where we had Fritzel placed.

Q. How long did that conversation take place?

A. Approximately twenty minutes.

Q. Then what did you do thereafter?

(Testimony of Victor L. Carlson.)

A. Then I believe Sergeant McKinney brought Gaither into the station. I remember the authorities brought a fellow by the name of Balzar and Chief Pool came into the station.

Q. At about that time. Where was Gaither placed at the time he was first brought into the station?

A. Approximately ten feet from Sage.

Q. What next happened?

A. I told Chief Pool of these burglaries and I had the car [140] outside and Chief Pool and I went out and looked at the old Ford, raised the trunk to see if the slot machines slipped into the trunk and there were loose dimes and two quarters in the trunk. We went back inside. Chief Pool told the boys——

Q. By boys?

A. Gaither and Sage. Told Gaither to go outside. Told Gaither to get in the police car No. 14. Gaither got into the right rear, Pool got into the left rear, and I got under the steering wheel.

Q. What happened thereafter?

A. Talked there a few minutes. Pool said, "Let's take a ride."

Q. Who did he say that to?

A. To me.

Q. What did you do?

A. So I backed out of the front of the old police department and drove north on Main Street, drove to a road by the Nellis Air Base, turned off Highway 91 on a gravel road, drove approximately a mile or a mile and a half to a big mound, turned off

(Testimony of Victor L. Carlson.)

this road back of this big mound, and Chief Pool told Gaither to get out of the car.

Q. Did he get out? A. Yes.

Q. While you were in your course of transportation, was there any conversation taking place?

A. Going out North Main Street Chief Pool was interrogating Gaither. [141]

Q. About what? A. About the burglaries.

Q. Do you recall what was said?

A. Yes. Do I have the Court's permission?

The Court: Go ahead.

A. He said, "Now, Mr. Son-of-a-Bitch, are you going to tell the truth about these burglaries? We know you have committed them. Now talk up and say so or take it the hard way." So we got back. This man told Gaither to get out of the car. Gaither got out on the left side of the car, with his back to the car, with Pool still interrogating him and struck Gaither in the midsection, struck Gaither on several occasions, struck him in the face and Gaither kept saying he didn't do it, he told the truth. We were gone approximately forty-five minutes to an hour and we came back the same route that we took to the police station and put Gaither inside.

Q. While you were at the mound, or this place where you eventually came to a halt by this mound that you spoke of, did you observe Chief Pool strike Gaither? A. I don't remember.

Q. Did you observe Chief Pool strike Coite Gaither? A. Yes.

Q. How many times did he strike him?



(Testimony of Victor L. Carlson.)

A. Several times.

Q. Did you strike him? [142]

A. Yes. Chief Pool struck him several times and Chief Pool told me, "Vic, you take over," which I struck Gaither and approximately slapped him six times.

Q. Where? A. On the face.

Q. Mr. Carlson, I hand you plaintiff's Exhibits Nos. 10 through and including plaintiff's Exhibit 21 for identification, and ask if you can identify any of these photographs? Inviting your attention to plaintiff's Exhibit 13 for identification, can you identify that particular proposed exhibit?

A. Yes.

Q. What is it?

A. This is the mound we drove back of on this gravel road up a mile or mile and a half west of Highway 91.

Q. Did you park your automobile at that particular location?

A. Yes; we were around the back.

Q. Showing you plaintiff's Exhibit 15, can you identify that photograph?

A. Yes; this is the mound.

Q. Showing you plaintiff's Exhibit 19 for identification, can you identify that photograph? If you can, say so; if you can't, please advise us.

A. I don't recognize that.

Q. Showing you plaintiff's Exhibit 21, can you identify that proposed exhibit? [143]



(Testimony of Victor L. Carlson.)

A. Yes, this picture is just of the back of the mound. Parked between that, right in back here.

Q. Showing you plaintiff's Exhibit 17, I will ask you if you can identify that proposed exhibit?

A. Yes, sir; that is back of the mound.

Q. Showing you plaintiff's Exhibit No. 12 for identification, I will ask you if you can identify that proposed exhibit?

A. This is the road leading off the highway toward the mound.

Q. Showing you plaintiff's Exhibit 16, I will ask if you can identify that proposed exhibit?

A. This is the back of the mound.

Q. Showing you this proposed Exhibit 14, I will ask if you can identify that proposed exhibit?

A. I do not recognize that.

Q. Showing you plaintiff's Exhibit 20 for identification, I will ask you if you can identify that photograph?

A. Yes; this is the back of the mound also.

Q. Showing you plaintiff's Exhibit 18, I will ask if you can identify that photograph?

A. Yes; this is back of the mound.

Q. Showing you plaintiff's Exhibit 10, I will ask you if you can identify that photograph?

A. This is the gravel road.

Q. Gravel road from where?

A. Nellis Air Force Highway 91. This is the road from Highway [144] 91 running west that we drove up.

(Testimony of Victor L. Carlson.)

Q. And showing you plaintiff's Exhibit 11, I will ask you if you can identify that proposed exhibit?

A. Yes; this here is near the mound, this is the gravel near the mound.

Q. Mr. Carlson, how long would you say that you were in this area of the mound?

A. Approximately thirty minutes.

Q. And during that period of time was Gaither being interrogated by any one?

A. I didn't hear you.

Q. During this one-half hour period was Gaither being interrogated by any one?

A. Yes, by Chief Pool.

Q. Do you recall what was said by either Chief Pool or by Gaither at that time?

A. Chief Pool—may I repeat this?

The Court: Go ahead.

A. Chief Pool said, "Now, you son-of-a-bitch, are you going to tell the truth, or are you going to take it the hard way?"

Q. What did Gaither say, if you recall?

A. Gaither said, "I told you the truth." He said, "We didn't do any of those jobs."

Q. During this thirty minute period of time that you were at the area of the mound, were any admissions made by Gaither? [145]

A. No.

Q. At any time did the force of the blows to Gaither cause him to fall to the ground?

A. Yes.

Q. About how many times?

A. Approximately three times.

(Testimony of Victor L. Carlson.)

Q. And then after the thirty minutes, I believe your testimony was that you returned to the North Las Vegas police department? A. Yes.

Q. What road did you return by?

A. The same road.

Q. And upon your arrival at the police department what happened?

A. We took Gaither back inside the police department and Chief Pool told Sage to come outside, with Sage in the same position—Sage got in the right rear, Pool the left rear—Sage in the left rear, Pool the right rear, and I under the steering wheel.

Q. Then what was said or done after you were in the car?

A. Pool was interrogating Sage on these burglary jobs, which Sage denied, said he wasn't even in the car and Pool got Gaither back outside and he said he was in the car.

Q. Do you recall what the conversation was when he brought Gaither out to Sage?

A. Gaither verified that Sage was in the car the night before.

Q. Do you recall under what [146] circumstances? A. The burglaries.

Q. Then what happened?

A. Well, Clifton came from the direction of the drugstore and Pool told Eddie to get into the car.

Q. What car? A. The police car.

Q. Did he get in?

A. Eddie got in the right front.

Q. Was Sage in the car at that time?

(Testimony of Victor L. Carlson.)

A. Yes.

Q. And he was seated where?

A. Left rear.

Q. Who else got in car No. 14 at that time?

A. Chief Pool was in the right rear.

Q. Were you in the car?

A. I was under the steering wheel.

Q. Then what happened?

A. I was told to take a drive.

Q. And did you drive? A. I did.

Q. Where?

A. Drove north on Main Street approximately College Avenue and North Main and made a right turn. Chief Pool said, "Get on the floor boards."

Q. He was talking to whom? [147]

A. To Sage. Told Sage to get on the floor boards. I had the front seat pushed back. There wasn't much room and Sage attempted and had a hard time to do so. Pool pulled his 45 automatic and said, "I told you to get on the floor boards, you son-of-a-bitch, now get down there." Sage had a hard time getting on the floor boards, but he did. We drove north on Main Street to this gravel road, turned off this gravel road approximately a mile or a mile and a half, and then back of this mound.

Q. Is this the same location you had driven to with Gaither?

A. Same location. Pool told Sage to get out of the car. Sage got out the rear seat and stood with his back against the right rear fender and Pool told Eddie, "All right, work him over."

(Testimony of Victor L. Carlson.)

Q. Eddie who?

A. Clifton. So Eddie took his shirt off.

Q. Whose shirt?

A. Eddie Clifton took his shirt off.

Q. Clifton's shirt or Sage's shirt?

A. He took his shirt off, walked over to Sage and—do I have the Court's permission—he walked up to Sage and hit Sage in the jaw here and said, "Now, Mr. Son-of-a-Bitch, are you going to tell the truth," and Sage reeled and leaned over the back of the police car and fell down back of the police car. Eddie Clifton went back to the police car and got his five-cell flashlight out, with about a four-inch head on it and he beat Sage [148] in the mid-section with the flashlight and Sage begged him not to strike him any more. Sage would fall down on the ground and Pool come up and kicked Sage in the back, ribs, wherever he could kick him. Chief Pool ordered me to put my handcuffs on Sage and his hands to his back. I put my handcuffs on but his wrist was so big they slipped off. Then Eddie continued to beat Sage.

Q. About how many times would you approximate that Sage was struck with the small end of the flashlight before you put the handcuffs on him?

A. Probably sixty or seventy times.

Q. After you put the handcuffs on him, what next happened?

A. He continued to beat him.

Q. Who continued to beat him?

A. Eddie Clifton with the flashlight. Sage would



(Testimony of Victor L. Carlson.)

fall down and he had sand in his eyes, sand in his mouth, begging him to not beat him, he didn't do the job, he said he told them the truth. At that time I saw an airplane had left Nellis Air Force Base, flying low. I told Chief Pool that the pilot could see him, so Chief Pool told him to get back into the car, which we all got in in the same position, got back out onto the gravel road, turned right, went in a westerly direction for approximately three miles, I would say, got on another gravel road that goes past the junk road and Pool told me to turn up the road. I turned up this road. We stopped at a knoll. [149]

Q. How far would you say the knoll was from this road you were travelling?

A. Approximately about four blocks.

Q. Then what happened when you got to the knoll?

A. So Chief Pool told Sage to get out of the car and Sage did and Chief Pool took Sage down in a gulley and there was an old couch down there. Chief Pool and Sage sat on it. Pool was interrogating him.

Q. About what?

A. About these burglaries, that he wasn't telling the truth and he wanted to take it the hard way and Eddie Clifton said to me, "Vic, we had better go down there. Pool is going to kill that son-of-a-bitch," so we got out of the police car, walked down this gulley and Chief Pool, he said, "Eddie, you take over." Eddie Clifton pulled his forty-five automatic and put it at Sage's right temple and

(Testimony of Victor L. Carlson.)

he said, "Now, Mr. Son-of-a-Bitch, are you going to tell the truth or I am going to blow your brains out." Sage repeatedly said he told the truth and they weren't involved in any burglary job. We left the scene and came back to the police station, drove up the alley.

Q. Before you come to that point, how long would you estimate you were at the area of the knoll on your second stop?

A. Approximately forty-five minutes.

Q. How did you return to the North Las Vegas police department? [150]

A. Came back this gravel road, which I don't believe there is a name to it, drove past the junk yard and came to West College Avenue, coming into North Las Vegas across Main Street to the first alley and came up the alley, drove to the back to the police department.

Q. Did you observe, on your return trip whether or not Sage was suffering physically?

A. Yes; he appeared to be hurt in the mid-section.

Q. At the time of the interrogation that you have referred to, first as to the mound and secondly as to the knoll and the gulley, were any admissions made by Sage?      A. No.

Q. You then returned through the alley to the North Las Vegas police department?

A. Yes; to the rear of it.

Q. What did you do upon your arrival at that time?      A. Chief Pool said—

(Testimony of Victor L. Carlson.)

Q. Let me ask what time of day was it?

A. That was approximately around 3:00 o'clock.

Q. Then what happened?

A. Chief Pool said, "You guys take Sage to the Henderson jail.

Q. He was referring to whom?

A. Eddie Clifton and myself. He said, "I will call Henderson and make arrangements." So we took Sage to the Henderson jail and booked him in there. [151]

Q. What did you do at the Henderson police department?

A. We booked Sage into Henderson police department on investigation of burglary and returned to North Las Vegas.

Q. Showing you plaintiff's Exhibit 9 in evidence, which is the booking card of the Henderson city police, there appears certain notations: "No phone calls, no visitors, maximum security. This one will run if possible." Do you recall either you or Officer Clifton making a request of that nature to the booking officer at the Henderson police department?

A. Officer Clifton.

Q. He made that request?                      A. Yes.

Q. How long were you at the Henderson police department or their city jail?

A. Approximately thirty minutes, forty-five minutes.

Q. Did you observe if any complaint was made by Sage to the Henderson police department at the time you were there?                      A. No.

(Testimony of Victor L. Carlson.)

Q. Were you with Sage, you and Clifton with Sage, all of this thirty minutes?

A. Yes; just about.

Q. Then what did you do?

A. We returned to the North Las Vegas police department.

Q. And what did you do upon your arrival?

A. Upon arrival at the North Las Vegas police department we [151-A] started making reports.

Q. What kind of reports?

A. Report of this investigation of burglary.

Q. Was any report made by either you or Clifton or Chief Pool concerning the matter of any injury to Sage at that time?

A. That following evening, the next day, when we learned that the grand jury was going to investigate the North Las Vegas police department.

Q. Then returning back to February 27th, when you arrived at the North Las Vegas police department from Henderson, what then did you do with reference to these police reports?

A. From the Henderson jail?

A. No; when you returned back to the North Las Vegas police department, you stated that you made certain reports. What did these reports relate to specifically, if you recall?

A. Just the investigation of the burglary at this particular time.

Q. Was any report made by you, and if you know, Clifton, concerning either Sage or Gaither?

A. We was ordered by Pool to make a report

(Testimony of Victor L. Carlson.)

that we drove out east College Avenue to Nellis Boulevard, turned right on Nellis approximately five or six blocks, Sage attempted to jump out of the police car, that is how he got the injuries.

Q. When was that told to you by Chief Pool?

A. Right after returning to the North Las Vegas police department. [152]

Q. Who was present when that statement was made?

A. Eddie Clifton.

Q. And yourself?

A. Yes.

Q. At any time during the transportation of Sage, did he make an attempt to jump out of your police vehicle?

A. No; he did not.

Q. Did you make such a report at the request and order of Chief Pool?

A. I did.

Q. What did you do with that report?

A. I had to testify to that report to the County Grand Jury.

Q. I am speaking of this day, what did you do with it?

A. Chief Pool got it.

Q. Was it made a matter of the official police records of the North Las Vegas police department, do you know?

A. Yes.

Q. Who signed that report, if you know?

A. I signed my copy. He signed his.

Q. Pardon?

A. I signed mine, Eddie Clifton signed his copy.

Q. After you had submitted that report, what did you next do?

A. Just went on routine police matters, I guess.

Q. When was the next time that you saw [153]



(Testimony of Victor L. Carlson.)

Sage?           A. It was the next evening.

Q. Where did you see him?

A. In the Henderson police department.

Q. About what time of day, rather the hour of the day?           A. About 8:00 p.m.

Q. What was your reason for being there?

A. To bring him back to the North Las Vegas police department.

Q. Who was present with you?

A. Eddie Clifton.

Q. What did you do with Sage?

A. Brought him to the North Las Vegas police department. After I had showed Gaither a sack containing the money from these burglaries, he admitted it, then he made a confession. I showed Sage the confession and Sage admitted it.

Q. Admitted what?           A. The burglary.

Q. Was Sage interrogated upon his return from the Henderson city jail?           A. Yes.

Q. Where was he interrogated?

A. In front of Chief Pool's desk.

Q. Who was present?

A. Chief Pool and myself.

Q. Any one else, if you recall?

A. That's all I recall. [154]

Q. How long did you interrogate, you and Chief Pool, interrogate Sage at that time?

A. Approximately thirty minutes, showed him the evidence and he made a confession.

Q. Do you recall if a statement was made by Sage, that is, a written statement, at that time?

(Testimony of Victor L. Carlson.)

A. I believe there was.

Q. Do you recall whether it was typewritten or in the handwriting of Sage?

A. I believe it was given to the chief by Ramona. She typewrote it out.

Q. After that was done, about what time of night was it?      A. Approximately 10:00 p.m.

Q. What next happened as it relates to Sage?

A. Then Chief Pool took Sage into the courtroom and told Sage that the Grand Jury was going to probe the police department.

Q. Who was present?

A. Myself, Al Ferguson, Chief Pool and Sage.

Q. What was said?

A. Chief Pool told Sage, asked Sage why he had given a statement to Dr. French at Henderson. Sage said he was sorry. Chief Pool told him, he said, "You know we are going to get in a lot of trouble" and if he couldn't write the statement. Sage was agreeable to write the statement contradicting Dr. French. I got paper and pencil and Sage started writing this [155] statement over and he was having a hard time and Chief Pool would put words in his mouth, what to put on the paper.

Q. This statement was in the handwriting of Sage?      A. Sage, yes.

Q. Do you recall how many pages it was?

A. I don't know. I didn't count them. It was quite a few.

Q. Do you know what happened to that statement?

(Testimony of Victor L. Carlson.)

A. That statement was testified to at the grand jury.

Q. No, what happened to that statement on that day, at that time?

A. Went in Chief Pool's custody.

Q. What did Sage say, if he said so orally, as to the manner in which he received certain bruises on his body and injuries?

A. I don't recall him making any statement at that time.

Q. It was all in writing, is that correct?

A. Yes.

Q. After that statement was taken of Sage, then what next happened?

A. Al Ferguson was present at the statement being taken. Chief Pool had Sage open up his shirt and show Al these bruises on his body and told Al Ferguson about the grand jury probe. He said Al should go over to the grand jury, due to the fact he was police commissioner, and uphold the police department.

Q. Then what happened? This conversation, I take it, took place in the courtroom behind Pool's office, is that right? [156]

Was anything further said, if you recall?

A. I don't recall anything.

Q. Then what happened?

A. Then they didn't know what to do with Sage, with these bruises, didn't want to take him back to Henderson.

Q. Who is they?

(Testimony of Victor L. Carlson.)

A. Chief Pool, and Eddie Clifton, myself and Dan Fisher was there at that time, and Dan Fisher said, "Maybe we can get him into the army stockade at Nellis," which was rejected.

Q. By whom?

A. By Chief Pool. Couldn't take him back to Henderson, so then they put Sage in the Las Vegas police department jail.

Q. Do we understand at that time there were no jailing facilities at North Las Vegas, is that correct?

A. That's right.

Q. Who took him to the Las Vegas city jail?

A. I and Danny Fisher.

Q. About what time of day or night was that?

A. Getting close to midnight.

Q. That was on the evening of February 28th?

A. Yes.

Q. What did you do at the time of booking Sage into the Las Vegas police department?

A. Well, he told us——

Q. Not conversation—just what did you do? [157]

A. We booked him in for burglary, then we returned to North Las Vegas.

Q. Did you see Chief Pool or Captain Clifton upon your return to the North Las Vegas police department?

A. Yes.

Q. Did you have a conversation with either one of them?

A. Not that I recall at that particular time.

Q. Now, going back to Gaither. You testified, I believe, that you brought him back to the North Las

(Testimony of Victor L. Carlson.)

Vegas police department?           A. Yes.

Q. And what did you do with him after he was brought back?

A. After we brought Gaither, he admitted the burglary. Gaither stayed around the police department there for approximately two hours and Al Ferguson, Chief Pool, myself and Gaither went over to the Oxford Club to eat. We wanted to give Gaither anything he wanted to eat, but he chose tomato soup, said he had a bad case of ulcers.

Q. What time of night was that?

A. That was approximately 11:00 o'clock.

Q. On what date, February 27th?

A. February 27th.

Q. Did you have any conversation with either Pool or Clifton at the Oxford restaurant, concerning either Gaither or Sage?

A. Not that I recall.

Q. Do you recall whether or not Gaither became ill while at [158] the restaurant?

A. He said he wasn't feeling well, that is the reason he had tomato soup. He said if he ate anything heavy it would come up.

Q. Then after taking food, what did you then do next?

A. We returned to the station.

Q. With Gaither?

A. Yes, and Gaither was taken to the Las Vegas jail.

Q. When was the next time you saw Gaither?

A. I don't remember the exact date, but it was



(Testimony of Victor L. Carlson.)

when Gaither and Sage and another man were arranged before the justice on burglary.

Q. Do you remember when that was accomplished?      A. In the afternoon.

Q. What date, if you know?

A. I don't recall the exact date.

Q. Did Gaither give a statement either before or after having food at the Oxford Club?

A. Not that I know of.

Q. A written statement?

A. I don't recall a statement.

Q. When was the last time, within this period of time, February and March, 1956, did you see either Sage or Gaither?

A. I was told by Eddie Clifton in March, approximately the 3rd or 4th, after learning the County grand jury was going to [157] probe the North Las Vegas Police Department through the Federal Bureau of Investigation, to go out to the county jail and talk to Gaither and to see what I could learn. I went to the sheriff's office and told him I wanted to see Gaither. I had to wait for two jailers to get in. They went down to the jail and brought Gaither out. The minute Gaither saw me he turned around and went back.

Q. Did you have a conversation with Gaither at that time?      A. He refused to talk to me.

Q. Was that the last time you saw Gaither in that period of time?      A. Yes.

Q. When was the last time you saw Sage through the month of February or March of 1956?

(Testimony of Victor L. Carlson.)

A. The last time I saw Sage was when I took him to the Las Vegas jail or taken him over for arraignment.

Q. To the justice's court? A. Yes.

Q. At about this time did you have any conversations with either Chief Pool or Capt. Clifton concerning the matter of either Sage or Gaither?

A. Chief Pool had to go to Texas. His father was sick, so he went to Huntsville, Texas.

Q. About when was this, do you recall?

A. That was the first part of March. [160]

Q. 1956?

A. Yes. The County grand jury was probing the North Las Vegas police department. Eddie Clifton and I went over to the Bonanza Club and used the private phone in the manager's office and we called Texas and talked to Pool.

Q. Did you talk to him? A. Yes.

Q. Who was present at the time you had this conversation?

A. Eddie, when I talked to him and then I told Chief Pool the County grand jury was going to probe the North Las Vegas Police Department, so Chief Pool said, "Well, I will return to North Las Vegas."

Q. Chief Pool told you that? A. Yes.

Q. Did he tell you anything else?

A. That was all at present. He said, "Just hold tight."

Q. When next did you see Chief Pool?

(Testimony of Victor L. Carlson.)

A. The next morning I came to the police department and Ramona showed——

Q. Who is Ramona?

A. Chief Pool's wife, stenographer at the police department. She told me that Chief Pool——

Q. Just a minute. Don't relate any conversation not in the presence of either Pool or Clifton. You saw Ramona?      A. Yes. [161]

Q. When did you next see Chief Pool?

A. Los Angeles Airport.

Q. On what date?

A. I don't recall the exact date. First part of March, 1956.

Q. How did you travel to the airport at Los Angeles?      A. Police car No. 10.

Mr. Watson: Your Honor, it seems to me we are going very far afield. I don't see the relevancy and I object on that ground.

The Court: It is pretty soft ground. Can you be more specific?

Mr. Watson: Yes, your Honor. It doesn't appear the last twenty questions here counsel has led up to anything that would be material or relevant to the case. The circumstances alleged in the indictment are now past and we have gone on to things that happened way into the following week.

The Court: Upon your legal point, your objection is irrelevancy. Overruled.

Q. You testified you travelled to the Las Vegas airport in police car No. 10?      A. Yes.

Q. Who was the owner of the police car?

(Testimony of Victor L. Carlson.)

A. The City of North Las Vegas.

Q. On whose instruction did you go to Los Angeles?

A. Chief Pool called Ramona and she told me Chief Pool wanted us to meet him at the airport. [162]

Q. Who travelled with you?

A. Eddie Clifton, Wilbur McManch.

Q. What time of day did you leave on your trip?

A. We left approximately eleven a.m.

Q. What time did you arrive?

A. Approximately four in the afternoon.

Q. Did you meet Chief Pool at the airport?

A. Yes.

Q. Was any one with him?

A. He was by himself.

Q. Did you have a conversation with him at that time?

A. Just on returning to North Las Vegas.

Q. Who returned to North Las Vegas?

A. Chief Pool, myself, Eddie Clifton, Wilbur McManch.

Q. Did a conversation take place during the course of your travel?

A. Yes, the County grand jury was probing our department and Chief Pool informed Eddie and myself we had made these statements he had jumped out of the car, we had to stick to them. Chief Pool said, "The first one that turns around will find himself on the desert."

(Testimony of Victor L. Carlson.)

Q. To whom did he direct that remark?

A. It was to me. I recall he looked at me.

The Court: What do you mean by "turn around"? Do you mean the first one who reversed his statement [163] or position as to Sage jumping out of the car?

A. Yes.

The Court: To the grand jury?

A. Yes.

Q. What time did you arrive back in North Las Vegas from the airport?

A. We stopped at San Bernardino. Approximately one o'clock in the morning.

Q. The following morning? A. Yes.

Q. Do you know, Mr. Carlson, if that particular trip in police car No. 10 was logged by the North Las Vegas police department?

A. No, it was not.

Q. Why wasn't it?

A. Nobody knew where we were going.

Q. Did Chief Pool tell you to meet him?

A. Chief Pool wanted to be met.

Q. Did he tell you that?

A. He didn't tell me at all. Ramona told me that.

Q. Upon your arrival at North Las Vegas the following morning at one o'clock, what happened if anything?

A. I don't recall anything occurring at that particular time.

Q. When next did you have a conversation with



(Testimony of Victor L. Carlson.)

either Chief [164] Pool or Capt. Clifton with reference to either Sage or Gaither?

A. It was the next morning. The County grand jury was getting hot; they had probed us pretty well. Chief Pool with Eddie was driving the car up himself, I just came into the station and they drove up. Chief Pool slipped over, he said, "Vic, you drive," and he said, "Go out to the Los Angeles highway."

Q. Who was in the car at that time?

A. Myself, Chief Pool and Eddie Clifton. I headed out the Los Angeles highway and Chief Pool said, "We have to get Eddie Clifton out of town" so we took Eddie Clifton to Baker, California. We left him off at Baker, California. Pool said he would be indicted by the grand jury and Eddie said when he got indicted and put in jail, he would come back and get him out. He said also when he got out of Baker, and directly looking at me, if anybody turned him around, they would find himself out on the desert.

Q. That remark was directed to whom?

A. To me.

Q. So what next happened at Baker?

A. Chief Pool and I returned.

Q. Where was Clifton to go, if you know?

A. He had a friend over in Los Angeles named Phil Pervano, lived in a trailer camp. We came back——

Q. Was any money given to Clifton at that time? [165]

(Testimony of Victor L. Carlson.)

A. Yes, Chief Pool gave him twenty dollars.

Q. For what purpose?

A. To get the bus on in to Los Angeles.

Q. While you were present did Chief Pool give any direction to Clifton as to what he should do when he arrived in Los Angeles?

A. To all of us he said the grand jury would be out to get him.

Q. Then did you return to North Las Vegas?

A. Yes.

Q. With whom?                   A. Chief Pool.

Q. Did you have any conversation with Chief Pool during the course of that transportation?

A. Just about we were getting to Baker we heard the sheriff's car, sheriff's radio broadcast from one of the units and evidently asked if he served the subpoena and he said no. Coming back we were talking about getting our subpoena and the grand jury.

Q. How long did that trip down and back take?

A. About an hour and ten or fifteen minutes.

Q. Each way?                   A. No, round trip.

Q. Do you know if that particular trip was officially logged at the North Las Vegas police department? [166]                   A. No, it wasn't.

Q. Upon your arrival at North Las Vegas, did you thereafter have a conversation with either Chief Pool or Capt. Clifton, relating to either Sage or Gaither?

A. The only conversation it come up we would be testifying before the grand jury.

Q. Mr. Carlson, I hand you plaintiff's Exhibits

(Testimony of Victor L. Carlson.)

No. 22 to and including No. 25 for identification, and ask if you can identify those proposed exhibits?

A. This is the road coming up out of the bank there, and this road turns up going to the gulley.

Q. You are referring to plaintiff's Exhibit 22 for identification, is that correct?

A. Yes. This is the road leading up approximately four blocks where we stopped the car.

Q. You are referring to plaintiff's Exhibit 23 for identification, is that correct?

A. Yes, sir. This is the approximate location where we stopped the car.

Q. At the gulley, by the bank there?

You are referring to plaintiff's Exhibit 24 for identification, is that correct?

A. Yes. This is the gulley.

Q. You are referring to plaintiff's Exhibit 25 for identification? [167]

A. Yes.

Q. Did you have occasion, Mr. Carlson, to visit or retrace the transportation of both Sage and Gaither with any officers, special agents of the Federal Bureau of Investigation?

A. Yes.

Q. Do you recall when that was done, to the best of your recollection?

A. That was done May or June, June 6th.

Q. What officers were with you?

A. Al Stewart, Federal Bureau Agent; Leslie Dieckman, Federal Bureau agent.

Q. At the time did you retrace the route taken on February 27, 1956?

A. Yes.

Mr. Babcock: At this time, your Honor, plain-

(Testimony of Victor L. Carlson.)

tiff offers into evidence Plaintiff's Exhibits Nos. 10, 11, 12, 13, 15, 16, 17, 19, 20 and 21 for identification.

The Court: Any objections?

Mr. Watson: We have never seen them, your Honor. No objection, your Honor.

Mr. Mattuecci: No objection.

The Court: There being no objections, government's offered exhibits 10, 11, 12, 13, 15, 16, 17, 19, 20 and 21 are received in evidence as government's exhibits by the same numbers. [168]

Mr. Babcock: At this time, your Honor, the plaintiff offers into evidence Plaintiff's Exhibits Nos. 22, 23, 24 and 25 for identification.

Mr. Watson: No objection, your Honor.

Mr. Matteucci: I have no objection.

The Court: Offered Exhibits Nos. 22, 23, 24 and 25 on the part of the government will be received in evidence by the same numbers.

Q. Mr. Carlson, at a time subsequent to February 28, 1956, did you have occasion to revisit the scene of the beatings? A. Yes.

Q. When was that, if you recall?

A. After the night of the 27th of February, I just gone off duty, ten or eleven o'clock at night, Eddie Clifton came down, driving a Chevrolet station wagon. He said, "Let's go for a ride, Vic," so I got in, went north on Main Street. I said, "Where are we going?" He said, "Chief Pool told me to get rid of that evidence." We drove back out 91 highway, up this gravel road, back of this mound

(Testimony of Victor L. Carlson.)

and knocked away the tire prints and foot prints and come back on the gravel road, drove up the same road we took with Sage, up this road to the bank there, turned off this road and went down this gulley where the couch was where they sat Sage. Clifton struck a match and burned it.

Q. Did it burn? [169]

A. Well, it lighted. I don't know if it kept burning.

Q. How long did you remain there?

A. Approximately five or ten minutes.

Q. At the time you left was it burning?

A. Yes, it was burning.

Q. What else did you do while you were there?

A. That's all. We came back to the police department. I went home.

Q. The flashlight that you have testified to, who was the owner of it?

A. I guess the North Las Vegas police department.

Q. Do you know where it is today?

A. When we left the Henderson jail, after booking Sage in, I believe we took the head off and threw the flashlight out in the field. That's the last time I seen it.

Q. You have never seen it since that time?

A. No.

Q. Did you return to that field at a later time?

A. Yes.

Q. In company of whom?

A. Federal agents.



(Testimony of Victor L. Carlson.)

Q. Whom? A. Dieckman and Stewart.

Q. For what purpose?

A. To see if we could find the flashlight. [170]

Q. Did you find it? A. No.

Q. Approximately when was that?

A. May or June of 1956.

Q. At around about that time did you return to the area of the gulley where Sage was taken, for any purpose?

A. Just with the F.B.I. agents.

Q. Did you observe the couch that was there?

A. We couldn't find it.

Q. Did you look for it? A. Yes.

Q. When was the last time you saw that couch that you referred to?

A. When Pool and Clifton and Sage sat on it.

The Court: This couch that has been referred to, is there any question as to any of it being a part of an automobile?

A. That was an old studio couch lying out there.

Q. When was the last time you saw that couch?

A. That was on February 27th.

Q. When you and Clifton were out there?

A. And Pool. Yes, Clifton and I.

Q. That is the last time you saw it?

A. Yes.

Mr. Babcock: You may inquire. [171]

The Court: At this point we will take our usual midafternoon recess.

(Jury admonished and recess taken at 3:00 o'clock.)

3:15 P.M.

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.)

MR. CARLSON

resumed the witness stand on

Cross-Examination

By Mr. Watson:

Q. Mr. Carlson, Mr. Gaither testified in court this morning that the blows he received were equally given by you and Mr. Pool, is that correct?

A. No, sir.

Q. He testified also that on occasions, when he was knocked to the ground, it was you who picked him up to be knocked down again, is that correct?

A. I didn't hear that last.

Q. I say he testified, that is Mr. Gaither, when he was knocked to the ground that you picked him, Mr. Gaither, up, to be knocked down again, is that true?

A. I picked him up, but I never knocked him down.

Q. You told us a little while ago that you, yourself, gave Mr. Gaither five or six blows, is that correct?

A. Slaps on the face.

Q. Where they sufficiently hard to make any injury to Mr. Gaither's face? Was there any swelling that you noticed? [172]

A. No, I don't believe so.

(Testimony of Victor L. Carlson.)

Q. What was the state of Mr. Gaither's clothing at the time you and Chief Pool, the three of you, returned to the North Las Vegas police department station?

A. I could see they were disarranged, but he had straightened them up by the time we arrived at the police department.

Q. Yesterday Mr. Sage told us that he received from you two kicks from behind in the region of the kidney, is that true?

A. No, I never touched Sage.

Q. You witnessed the alleged beating of Sage, but you did not participate in it in any way?

A. No, I just put my handcuffs on him.

Q. And Mr. Sage told us yesterday that you also, as well as another person present, drew your gun and came down into the gulley and menaced him with it. Is that statement of Mr. Sage's true?

A. It is.

Q. Mr. Gaither told us this morning that when this trip began out in the desert from North Las Vegas police station, that Mr. Pool was driving the car and you and he were sitting in the back seat, is that true?

A. No.

Q. It was the other way around?

A. I drove the car.

Q. Did you drive the car at all times when Mr. Sage, as you [173] have testified, was out being beaten up?

A. Yes, I drove the car all the times.

(Testimony of Victor L. Carlson.)

Q. At the time of the beating of Mr. Sage, did you protest at all to what was being done?

A. No, sir, I did not.

Q. Did you try to stop the other officers?

A. No, I did not. The only time, when I saw the Air Force plane, I told him the pilot could see him.

Q. And you urged him to go to another place where he could not be seen?

A. I did not.

Q. Sir? A. I didn't.

Q. Following these incidents, February 27th and February 28th and going to the investigation by the County grand jury which you told us about, Mr. Carlson, I am not going to ask you what your testimony was before the grand jury, rather I am going to ask you, did you not state to at least one other person here in Las Vegas that you had gone to the grand jury and had told the truth, which was that Sage had attempted to jump out of the car when you and Clifton were taking him over to Henderson. Didn't you say that to someone after your testimony given to the County grand jury?

A. I could have; I don't recall it.

Q. Was your testimony before the County grand jury influenced [174] in any way by Mr. Pool or by Mr. Clifton? A. By Chief Pool.

Q. You testified at the County grand jury under duress, is that correct? A. Yes.

Q. Mr. Carlson, I show you what has been marked, for the purpose of identification, defend-

(Testimony of Victor L. Carlson.)

ants' Exhibit C, and ask you to examine it and tell me whether or not you recognize it?

A. Yes, I recognize it.

Q. What is Defendants' Exhibit C, please, Mr. Carlson?

A. This is a statement we had to make under direction, on order, from Pool and Clifton, to get the heat off of us from the County grand jury.

Q. Is the statement signed by you, Mr. Carlson?

A. Yes.

Q. When you signed it—what date is the statement?

A. February 27th.

Q. Now February 27th, Mr. Carlson, is the date of the burglaries and it is the date of the alleged beatings, is it not?

A. Right.

Q. And didn't you tell us it was one or two days later that you heard there was going to be heat from the County grand jury?

A. Yes.

Q. And on February 27th, Mr. Carlson, is there a time marked on there also when the report was delivered and made? [175]

A. Yes, eleven p.m.

Q. Now at eleven p.m. that night, February 27, 1956, you did not know about this heat that might come from the County grand jury, did you?

A. This was a cover-up for him, in case anything come up. We found out about the statement to Dr. French at the city jail in Henderson.

Q. But you didn't know about the grand jury at eleven o'clock that night, February 27th?

A. No, we didn't at this particular time.



(Testimony of Victor L. Carlson.)

Q. I show you now, Mr. Carlson, what has been marked, for the purposes of identification, Defendants' Exhibit D, a document of several pages, which I ask you to examine and tell me whether or not you recognize that? What is the document, Mr. Carlson?

A. This is a statement made to take any heat away from us.

Q. By whom was it made?

A. It was typewritten by Ramona.

Q. Whose words is it in?

A. Those are my words.

Q. And whose signature is at the end of it?

A. My signature.

Q. And what is the date, Mr. Carlson?

A. March 3rd.

Q. I now show you, Mr. Carlson, a document of four pages, [176] which are collectively known as Defendants' Exhibit D, and ask you to give your attention to what appears to be a signature written sideways on the margin of that page. Is that your signature?

A. It looks like my signature.

Q. Then the same month of March, 1956, when you say the heat of the County grand jury was on all of you, you were discharged from the North Las Vegas police department by Chief Pool, were you not, Mr. Carlson?

A. No, I was discharged by William McMinch on April 25, 1956.

Q. Do you know whether or not this was done without the knowledge of Chief Pool?

(Testimony of Victor L. Carlson.)

A. I didn't hear that.

Q. Do you whether or not this discharge from the police department was done by Mr. McMinch without the knowledge of Mr. Pool?

A. I don't know if Chief Pool had knowledge of it or not.

Q. Did you find out later whether he had knowledge of it?      A. I did not.

Mr. Watson: At this time defendant Pool, if the Court please, offers in evidence Defendants' Exhibit C and Exhibit D.

Mr. Babcock: May we have the Court's indulgence, your Honor?

The Court: Counsel may examine it. [177]

### Voir Dire Examination

By Mr. Babcock:

Q. Mr. Carlson, I hand you what has been marked Defendants' Exhibit C for identification, and I will ask you at what time of day it was that that statement was made?

A. This statement was, I believe it was, made after Dr. French had seen Sage at the jail in Henderson.

Q. Was that statement made by you in the North Las Vegas police department?      A. Yes.

Q. Were you on duty at that time, do you recall?

A. I don't just recall the time. I could have dated it back one hour or the other.

Q. That statement appears to be written on a

(Testimony of Victor L. Carlson.)

mimeograph paper under the name of the police department, North Las Vegas, Nevada. Was that type of paper used by you and other officers in recording statements for disposition of cases?

A. Yes.

Q. What did you do after you signed that exhibit?  
A. Gave this to Chief Pool.

Q. Do you know what Chief Pool did with it?

A. No, I don't.

Mr. Babcock: Your Honor, we object on the grounds it appears to be original document of the police department, therefore no foundation has been laid as to custody.

The Court: May I see the document? I think the objection [178] is probably good, at least it is on the face an official document. Do you wish to lay a foundation, counsel?

Mr. Watson: Your Honor, I do not know whether or not as to the other exhibits. May I ask counsel's stand on the other exhibits? We have no alternative theories to offer the Court.

Q. (By Mr. Babcock): Mr. Carlson, I hand you what has been marked Defendants' Exhibit A for identification. This appears to be a copy, a type-written copy, bearing a signature in ink, which you have identified as yours. Do you know where the original of that is?  
A. No, I do not.

Q. Did you sign more than one copy of that statement?  
A. Not that I remember.

Q. Did you ever see an original?

A. This is about the only thing I have seen, right here.

(Testimony of Victor L. Carlson.)

Q. After you signed that particular statement, what did you do with it?

A. Gave it to Chief Pool.

Q. Was that statement made in the ordinary and usual course of your duties as a police officer with the North Las Vegas police department? Was it made while you were on duty?

A. It could have been; I don't remember.

Q. Do you know if it was filed with any of the records of the [179] North Las Vegas police department?      A. I do not know.

Q. When was the last time you ever saw that statement, if you can recall?

A. I don't recall.

Mr. Babcock: May I inquire of counsel if this purports to be a copy of the North Las Vegas police department, made in the usual and ordinary course of business of that department?

Mr. Watson: May it please the Court, it is my understanding that it did not have the character of being an official document at all, but simply was an explanation which was written up by Mr. Carlson and offered to Mr. Pool and set forth a verification of facts and explanation of Mr. Carlson's notes. It appears to be a copy, by which I suppose it means it is on thin paper. I would like to point out to the Court that it is signed, it is in every respect, so far as I know, the original statement, nor do I know it to be an official document.

The Court: What did you say about official document?

(Testimony of Victor L. Carlson.)

Mr. Watson: I do not know that they are official documents.

The Court: Well, how did you get these into your possession? Defendants' Exhibit C for identification appears to be on the official form of the North Las Vegas police department. Were [180] these taken from the records of the North Las Vegas police department?

Mr. Watson: Not by me, your Honor, nor were they to my knowledge. They were delivered to me by my client.

The Court: As to defendants' D for identification, your objection to that, Mr. Babcock, was based on the proposition that it was a carbon copy?

Mr. Babcock: No, your Honor, it again purports to be a document taken under circumstances which would reflect it to be an official record of the North Las Vegas police department, by reason of investigation of certain burglaries in that city.

The Court: Well, the objection is overruled as to defendants' D and D is admitted in evidence.

You offered it, didn't you, counsel?

Mr. Watson: I did, your Honor. I pass the witness.

The Court: You have offered C also?

Mr. Watson: Yes, your Honor, and I understand the Court overruled—I mean to say, excluded C and admitted D. Am I correct?

The Court: Correct.



(Testimony of Victor L. Carlson.)

Cross-Examination

By Mr. Matteucci:

Q. Mr. Carlson, you stated it was about three p.m. when you returned from the desert at the time of this alleged beating of Mr. Sage, is that correct?

A. As near as to my knowledge, it was approximately three, [181] one way or another.

Q. How far one way or the other would you say?

A. It would be thirty minutes one way or the other.

Q. Then you stayed around the North Las Vegas police department how long?

A. We left immediately for Henderson and Chief Pool got out at the open end of the police department.

Q. And you left? A. Yes.

Mr. Matteucci: That's all.

The Court: Counsel, Mr. Watson, if you can lay a foundation for your offered Exhibit C for identification, the Court will then reconsider the matter of the offer.

Mr. Watson: Thank you, your Honor.

Redirect Examination

By Mr. Babcock:

Q. Mr. Carlson, I wish to inquire of you concerning defendants' Exhibit D in evidence, which is a four-page, single line typewritten document, and ask when this statement was signed by you?

A. I signed this—I dictated the report to

(Testimony of Victor L. Carlson.)

Ramona, our secretary, and after she had type-written it, I would have had to sign it.

Q. Who is Ramona?

A. Chief Pool's wife, the secretary. [182]

Q. Do you recall where this statement was dictated to Ramona?

A. It would have had to have been in the police department.

Q. It was done in the police department, is that correct?

A. Yes, we usually dictated our statements.

Q. Was that statement dictated to Ramona while she was on duty as secretary of the North Las Vegas police department?

A. As near as I remember it was.

Q. Do you recall if you were on duty at the time you dictated that statement to Ramona?

The Court: Counsel, I am just a bit confused, perhaps the witness is, too. What do you mean "on duty"?

Mr. Babcock: On duty as a police officer.

The Court: As distinguished from a private citizen?

Mr. Babcock: As a person coming on to the police department for the purposes of his own business.

The Court: In other words, was it done in connection with police business?

Mr. Babcock: Yes, that is correct.

A. Yes, I was on duty.

Q. When is that statement dated?

(Testimony of Victor L. Carlson.)

A. March 3, 1956.

Q. Why did you make this statement?

A. I made that statement to cover the North Las Vegas police department, to get heat off the grand jury if anything arose [183] from the grand jury.

Q. What were you trying to cover up?

A. The alleged beating of Sage and Gaither.

Q. Who requested you to make this statement, if any one did?      A. Chief Pool gave orders.

Q. And when was that done, if you recall?

A. Right after he came back from Los Angeles, as near as I remember.

Q. Was that the trip that he came back with you?      A. Yes.

Q. Were any threats made against you in connection with this statement?      A. Yes.

Q. By whom?      A. By Chief Pool.

Q. When?

A. And Eddie Clifton; we had to testify this right down the line before the grand jury, or we would be found on the desert.

Q. When was that statement made?

A. That was made three or four times.

Q. On page 2 of this statement, Mr. Carlson, I can't determine the line, but in about the bottom quarter of this page, it reads as follows: "We had road approximately six blocks." Did that happen on that date?      A. No. [184]

Q. Did you stop the car in an effort to keep Sage from jumping out of the car?      A. No.

(Testimony of Victor L. Carlson.)

Q. Are certain portions of this statement true—I am referring to defendants' Exhibit D in evidence? A. No.

Q. You have had an opportunity to read this, have you not? A. Yes.

Q. Are certain portions of this statement false?

A. Yes.

Q. Why did you sign it if certain portions of this statement are false?

A. I was told to sign it to testify on, or we would be found out in the desert.

Mr. Babcock: That is all we have, your Honor.

Mr. Watson: No questions, your Honor.

Mr. Matteucci: No questions, your Honor.

(Witness excused.)

### RAMONA WOLF

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Babcock:

Q. Will you state your name?

A. Ramona Wolf.

Q. Where do you reside?

A. 214 West Drive, Detroit Lakes, [185] Minnesota.

Q. Did you ever reside in North Las Vegas, Nevada? A. Yes, sir.

Q. When?

(Testimony of Ramona Wolf.)

A. I came to North Las Vegas October of 1955.

Q. How long did you reside in North Las Vegas, Nevada?

A. Until the fore part of April of '56.

Q. Were you ever in the employ of the North Las Vegas police department? A. Yes, sir.

Q. Will you state the dates of that employment?

A. I started in October, 1955, and I worked until December, then I started working again in February of 1956.

Q. When did you start working in February of 1956?

A. I am not sure; the fore part.

Q. In the fore part of February, 1956, what type of work were you doing in the North Las Vegas police department?

A. I was typist and secretary to Chief Pool, chief stenographer and relief dispatcher.

Q. What were your hours of duty in the month of February, 1956?

A. From eight a.m. until four p.m.

Q. Each working day? A. Yes, sir.

Q. On February 27, 1956, were you on duty at the North Las Vegas police department?

A. Yes, sir, I was. [186]

Q. In the same capacity you have testified to?

Mr. Watson: I would like to take the witness on voir dire as to her competence to testify.

The Court: As to what?

Mr. Watson: Her competence to testify. I mean, your Honor, the fact that I would like to inquire.



(Testimony of Ramona Wolf.)

Voir Dire Examination

By Mr. Watson:

Mrs. Wolf, at the time in question, February 27, 1956, were you married?      A. Yes, sir.

Q. At that time were you married to this man, the defendant, William Pool?      A. Yes, sir.

Q. You were married to him in December of the preceding year, 1955?      A. Yes.

Q. And remained married to him until April of 1956?      A. Yes, sir.

Mr. Watson: If the Court please, although the marriage has been dissolved, the fact that this witness was in such relation to the defendant during the time in question, I believe should make her incompetent. I move she not be permitted to testify against her former husband.

The Court: Do you say that seriously. I have not heard any question as to confidential communication. [187]

Mr. Watson: Your Honor, it is my understanding of the law the mere calling a witness under such circumstances and position would be sufficient to raise the issue.

The Court: Well, counsel, what is your position?

Mr. Babcock: In response to that, your Honor, the plaintiff takes this position—we will not ask of her any confidential communication at or about the time in question. We feel we have the right to

(Testimony of Ramona Wolf.)

inquire of her as to her observation of things that occurred at the police department or perhaps elsewhere, in conjunction with her official duties as a private secretary to Mr. Pool and police stenographer and a dispatcher of the North Las Vegas police department. During the course of this interrogation, we will not inquire of her as to any communication, as to any conversation had alone with Mr. Pool.

The Court: Objection overruled. The witness may testify. The Court rules as it does particularly to the fact that this witness occupied an official position with the police department of North Las Vegas and may testify as to those matters which occurred during the time in question and became known to her in her official capacity as an employee of the police department, which matters are not in the nature of confidential communication between herself and her husband. [188]

Mr. Babcock: Your Honor, I wish to instruct the witness as to your order. I will not inquire of you as to any communication, confidential or otherwise, had alone with the defendant William Cecil Pool. You understand? And so if there is any communication or conversation you might be referring to just between the two of you, please do not answer.

(Testimony of Ramona Wolf.)

Direct Examination

(Continued)

By Mr. Babcock:

Q. I believe you testified that you were on duty with the North Las Vegas police department on February 27, 1956? A. Yes.

Q. In the capacity you have previously testified to, is that correct? A. Yes.

Q. Do you know a man by the name of Coite Gaither, Jr.? A. Yes, sir; I do.

Q. When did you first see him, if you recall?

A. In the office, when he was brought in the North Las Vegas police department on the morning of February 27th.

Q. About what time of day was that?

A. I don't recall, mid-morning; I don't recall the exact time.

Q. What was done with Coite Gaither upon his arrival at the police station?

A. He was placed in the room where Chief Pool is located.

Q. Did you have occasion to observe the movements of Gaither on that morning or that day?

A. Yes, sir.

Q. After you observed him in the room of Chief Pool, what next did you observe in relation to Coite Gaither?

A. I saw Chief Pool interrogating Mr. Gaither. I didn't hear any of the conversation at all, with the exception of Chief Pool saying, "You are lying."

(Testimony of Ramona Wolf.)

Q. Then what was the next thing you observed in relation to Coite Gaither?

A. Then Chief Pool called into the desk. He asked me——

Q. Just one moment—was any one present?

A. Mr. Gaither and Chief Pool and I.

Q. What was said?

A. I was called to his desk to take a statement from Mr. Gaither and Chief Pool dictated the statement and read it to Mr. Gaither and after I transcribed the statement I handed it to Mr. Gaither and he signed it.

Q. What happened to the statement that Mr. Gaither signed, if you know?

A. I don't know.

Q. Was it handed back to you?

A. No, sir.

Q. Next what did you observe in relation to Coite Gaither?

A. Well, a few minutes later Chief Pool said——

Q. Now, who was present when Chief Pool made the statement you are referring to? [190]

A. Just Mr. Gaither and Chief Pool and me.

Q. Was Gaither present at the time you heard this communication?      A. Yes, sir; he was.

Q. Proceed.

A. I heard Chief Pool say, "Come on, we will go for a ride."

Q. Then what happened?      A. They left.

Q. Who left?

A. Chief Pool and Mr. Gaither went out the

(Testimony of Ramona Wolf.)

door and I didn't see them go in the car or anything. They were gone about an hour or so.

Q. Did you observe anyone else leaving with Chief Pool and Gaither out of the police department? A. No, sir.

Q. Did you observe who returned with Chief Pool and Gaither upon their return, after an absence of an hour or so?

A. The only one that came to the door of the police department was Mr. Gaither and Chief Pool.

Q. Did you observe the movements of Gaither at that time? A. He was ordered to sit down.

Q. Did you observe his physical condition at that time?

A. At that time I thought his face was very flushed and red. I didn't know what it was about.

Q. Did you observe if his face was flushed and red at the [191] time he was being interrogated by Chief Pool before their absence?

A. No, sir; I did not.

Q. What is the next thing you observed in relation to Coite Gaither?

A. All I remember him sitting there in the chair.

Q. When was the last time you saw Coite Gaither on that day? A. I don't recall.

Q. Were you, during this period of time, going about your duties as dispatcher and the like?

A. Yes, sir.

Q. Do you know a person by the name of Ray Lewis Sage, Jr.? A. Yes, sir.

Q. Did you have occasion to see him on or about



(Testimony of Ramona Wolf.)

February 27, 1956?           A. Yes, sir.

Q. Where did you see him?

A. I saw him in the police car in front of the police station. I happened to look out the window and I saw him. I later found out it was Ray Sage. He went to the police car with Chief Pool, Edward Clifton, Vic Carlson. I don't remember the position.

Q. What time of day was it?

A. I can't say, sir; it was later in the day.

Q. Was it morning or afternoon, if you recall? If you don't [192] know, just tell us.

A. I don't know.

Q. How long did you have occasion to observe these four people in the automobile at that time?

A. Well, I had other duties to do. I didn't stand there and watch.

Q. That is what I am asking, just how long?

A. I just looked out for a few moments and the next time I looked out they were gone. I don't know what happened.

Q. When was the next time you saw Ray Lewis Sage, Jr.?

A. Not until the next night, the 28th.

Q. You testified that they were gone in this car?

A. Yes, sir.

Q. Now from that moment, when was the next time that you saw Chief Pool, Capt. Clifton and Vic Carlson?

A. Later that day. I don't know what time.

Q. About how much later?

A. I couldn't say. I don't remember their com-

(Testimony of Ramona Wolf.)

ing to the door or anything. All I know they were there.

Mr. Babcock: You may inquire.

Mr. Watson: No questions.

Mr. Matteucci: No questions.

(Witness excused.) [193]

WILLIAM N. WITTE

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Babcock:

Q. Will you state your name, please?

A. William N. Witte.

Q. What is your occupation?

A. Deputy sheriff Clark County, Las Vegas, Nevada.

Q. Where is your residence?

A. Paradise Valley, Las Vegas.

Q. How long have you been a deputy sheriff of Clark County?

A. Approximately five years.

Q. What are your duties as such?

A. I am the sergeant in charge of the identification bureau of the sheriff's department.

Q. On February 27, 1956, or thereabouts, what were your duties with the Clark County sheriff's department?

A. On the 27th and through the remaining time

(Testimony of William N. White.)

after that, I was in charge of the fingerprints, photographing, casts and prints for the department.

Q. Did you have occasion to take a photograph of a person by the name of Ray Lewis Sage, Jr.?

A. Yes, sir; I did.

Q. When was that photograph taken?

A. It was taken on the morning of the 30th of February.

Q. Where was that photograph taken? [194]

A. Inside the detective bureau, sheriff's office.

Q. Do I understand the photograph was taken by you? A. Yes, sir; it was.

Q. What type of camera?

A. X-7 reflex 35 mm.

Q. What type of print is developed from that type of camera?

A. That particular photograph was a color transparency, 35 mm.

Q. How many pictures did you take of Ray Lewis Sage on that day? A. Two.

Q. Do you have them with you?

A. Yes, sir; I do.

Q. May I see them. Sergeant, I hand you plaintiff's Exhibit 26 for identification, which purports to be a box containing two slides, and I will ask if you can identify this proposed exhibit?

A. Yes, sir.

Q. What is it?

A. These are glass-mounted slides of Mr. Sage I took on that date, these slides being inscribed with the number and initials of the department.

(Testimony of William N. White.)

Q. By whom were those photographs taken?

A. By myself.

Mr. Babcock: I offer into evidence plaintiff's Exhibit 26 for identification.

Mr. Watson: May I see them? [195]

Q. May I ask, Sergeant, do those two prints accurately and truly portray the person of Ray Lewis Sage on the date the photographs were taken?

A. Yes, sir; they do.

Mr. Watson: I am going to object to this introduction, for the reason first, the evidence as to the condition of Mr. Sage's body is already put in the record by Dr. French. These are extra film and are only introduced for the purpose of prejudicing the jury. Secondly, your Honor, they have not been identified as to specific date. Your Honor can take judicial notice there is no such date as February 30th this or last year and never has been and that is the date the pictures were alleged to have been taken, by the testimony of Mr. Witte.

The Court: I understand the witness to say there was no date inscribed on the pictures.

A. No, sir; there was not.

The Court: What is your best recollection as to the date the pictures were taken?

A. The morning after the booking of Mr. Sage.

Q. Do you recall what the approximate date was?

A. He was, I believe, booked into the county jail on the 29th of February. I am not certain.

The Court: Objection overruled. The exhibit

(Testimony of William N. White.)

will be received in evidence as government's Exhibit 26.

Q. Sergeant Witte, the slides are a small picture, are they [196] not? A. Yes, they are.

Q. Do you have facility to project these slides and give a more detailed view of the photographs?

A. Yes, sir.

Q. Do you have such equipment here?

A. Yes, sir.

(Permission granted to project slides and pictures shown.)

Q. Sergeant Witte, I hand you plaintiff's Exhibit 27 for identification, which purports to be a postive print, photographic print, and ask if you can identify that proposed exhibit?

A. Yes, sir; I can.

Q. What is it?

A. This is from the negative of the black and white print pictures that were taken at the same time that I took the colored prints.

Q. What is the subject of this proposed exhibit; who is the person? A. Ray Sage.

Q. When was the photograph taken?

A. At the same moment, or within the next few moments, that I took the colored transparencies.

Q. At the Clark County sheriff's office, Las Vegas, Nevada? A. Yes, sir.

Q. I hand you what has been marked plaintiff's Exhibit 28 for [197] identification and ask you if you can identify that proposed exhibit?



(Testimony of William N. White.)

A. Yes, sir; I can.

Q. What is it?

A. This is a photograph of Ray Sage taken at a distance in the detective bureau of the sheriff's department, at the same time I took the others.

Q. Do the two photographs, namely, plaintiff's Exhibits 27 and 28 for identification, accurately and actually portray the condition of the person whose picture is shown herein? Do these accurately show the condition of the person of Ray Sage at the time the photographs were taken?

A. No, sir.

Q. In what way?

A. The black and white photograph does not portray the actual facts. These areas are nothing but gray color, therefore, the color would not accurately portray the actual facts.

Q. For a black and white print, do these prints accurately portray the condition by photograph of the person of Ray Sage on that date?

A. Yes, sir; for black and white.

Mr. Babcock: We offer into evidence plaintiff's Exhibits 27 and 28.

No objection.

The Court: There being no objections, the offers are [198] received in evidence as government's Exhibits 27 and 28, these being black and white photographs of Mr. Sage.

Mr. Babcock: You may inquire.

Mr. Watson: No questions.

Mr. Matteucci: No questions.

(Witness excused. Jury admonished and court recessed at 4:25 p.m.)

Wednesday, October 16. 1956, 10:00 A. M.

Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.

WILLIAM O'REILLY

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Babcock:

Q. Will you state your name?

A. William O'Reilly.

Q. Where do you reside?

A. 3792 Paradise Valley Road.

Q. Clark County, Nevada?

A. Clark County, Nevada.

Q. What is your occupation?

A. Deputy sheriff, Clark County, Las Vegas.

Q. How long have you been associated with the Clark County sheriff's office?

A. Eight years. [199]

Q. In the months of February and March of 1956 were you a deputy sheriff with the Clark County sheriff's office?      A. I was.

Q. In what capacity?

A. Chief of detectives.

Q. On or about that time did you have occasion

(Testimony of William O'Reilly.)

to see Coite Gaither, Jr., and Ray Lewis Sage, Jr., at the Clark County jail, Clark County, Nevada?

A. Yes; I did.

Q. On what date did you see them?

A. The first day I saw them was on February 29th, approximately 5:00 p.m.

Q. When was the second time you saw them?

A. Approximately 11:00 o'clock the morning of March 1st.

Q. Did you have occasion to observe the physical appearance of Coite Gaither, Jr., and Ray Lewis Sage, Jr.?

A. Yes; I did.

Q. On what date was that?

A. That was on March 1st.

Q. 1956?

A. 1956.

Q. Where did you observe the physical appearance of these two persons?

A. In the Detective Bureau of Clark County sheriff's office.

Q. Under what circumstances? [200]

A. We received a report from the jail that there were two men that were injured in our jail and I sent Sergeant Parrish to the jail and had them brought to me.

Q. And then what happened?

A. Ray Sage and Coite Gaither came into the Detective Bureau, said they had been injured——

Q. No conversation. Did you observe them at that time?

A. Yes; I did.

Q. What did you observe?

A. I had them remove their shirts and I noticed

(Testimony of William O'Reilly.)

that Ray Sage had numerous bruises all through the chest area and stomach area and Coite Gaither had yellowish-grayish bruises on the chest area and on the lower stomach area, and also a bruise on the back on the right shoulder.

Q. I show you plaintiff's Exhibits Nos. 27 and 28 in evidence and ask if you can identify these two exhibits?

A. Yes, these were pictures taken in the Clark County sheriff's office of Ray Sage March 1st.

Q. At the time you observed the physical appearance of Ray Sage, do those photographs represent accurately the appearance as you observed that on March 1, 1956?      A. They do.

Mr. Babcock: You may inquire.

#### Cross-Examination

By Mr. Watson:

Q. Mr. O'Reilly, did you call a doctor? [201]

A. I did not call a doctor into the sheriff's department, no.

Mr. Watson: That's all.

#### Cross-Examination

By Mr. Matteucci:

Q. Mr. O'Reilly, did you take pictures of the injuries to Mr. Gaither?      A. No; I did not.

Q. Did anybody in the sheriff's office take pictures of the injuries to Mr. Gaither?

A. No; they did not.

(Testimony of William O'Reilly.)

Q. But they did take pictures of the injuries to Mr. Sage, is that right? A. Yes.

Q. Do you know when they were taken?

A. They were taken approximately noon, March 1, 1956.

Q. And the boys were brought into the Clark County sheriff's office on the 29th?

A. They were booked in previous night, on the 29th.

Mr. Matteucci: That's all.

Mr. Babcock: No further questions.

(Witness excused.)

Mr. Babcock: The United States rests, your Honor.

(Opening statement waived on part of both defendants.)

## MOTION IN THE ABSENCE OF THE JURY

Mr. Matteucci: At this time, your Honor, I want to make a motion for acquittal on Count 1 on behalf of Clifton and [202] Pool. The basis of the motion, your Honor, is this: That there is no evidence in the record to show Sage was in any way beaten for the purposes of securing a confession. Your Honor, I believe—I know you are acquainted with the fact—that there must be evidence beyond a reasonable doubt to convict these two defendants. The only statement we have at the time of these alleged beatings is the fact that one of them accused in this



action said to Mr. Sage, "Are you going to tell the truth?" That is all, your Honor. Now, on that basis alone, I move for a judgment of acquittal.

Mr. Watson: If the Court please, may I ask the same grounds be urged on behalf of the Defendant Pool as to Counts 1 and 2 and Defendant Pool be considered to have made the motion for judgment of acquittal on those grounds as to Counts 1 and 2?

The Court: The record will so show. Does counsel for the government desire to make any comment in connection with the motions?

Mr. Babcock: The government feels, your Honor, you have heard the evidence and we submit the motions without further argument.

The Court: The motions for acquittal made by counsel on behalf of the Defendant Pool and Defendant Clifton, going to Count 1 and Count 2 of the indictment, are denied. Mr. Marshal, you will return [203] the jury to the courtroom.

10:15 A.M.

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.)

AL FERGUSON

a witness on behalf of Defendant Pool, being duly sworn, testified as follows:

Direct Examination

By Mr. Watson:

Q. Will you state your name, please?

A. Al Ferguson.

(Testimony of Al Ferguson.)

Q. What is your address?

A. 1919 Bruce Avenue, North Las Vegas.

Q. Mr. Ferguson, on or about February 27th and 28th, 1956, did you hold an official position in the governing of the City of North Las Vegas, Nevada?

A. I did.

Q. What was that position?

A. Police commissioner.

Q. Do you know Ray Lewis Sage, Jr.?

A. Yes, sir.

Q. Do you know Coite M. Gaither, Jr.?

A. Yes, sir.

Q. Did you participate in the investigation by the North Las Vegas police department of the activities of those two persons?

A. Yes, sir. [203-A]

Q. Were you present on the evening of February 28, 1956, when Ray Lewis Sage was at the North Las Vegas police station and being interrogated?

A. Yes, sir.

Q. Please tell the Court and jury what happened on that occasion?

A. The evening of the 28th, when I got through work at 5:00 o'clock, I went home, cleaned up and changed clothes and went back to the North Las Vegas police station and some time during the evening—I don't remember exactly the time, but Sage was making out a report.

Q. Who was present at that time, if you know?

A. Well, Chief Pool was present and officers on duty, Betty Phillips, I believe, the stenographer. It

(Testimony of Al Ferguson.)

has been so long ago I just don't remember all the names.

Q. What occurred, if you recall, at the time Mr. Sage was making out this statement?

A. He was sitting at the outer desk, writing his statement out and with the men on duty coming in and out of the station they kept distracting his attention from what he was doing and he was asked if he wanted to go back in the court room and sit at that desk and finish his statement, because of the confusion of people coming in and going out of the police station, and he went into the courtroom and sat at the desk and finished his statement back there, the best I recall. [204]

Q. Who went back into the courtroom with him?

A. Oh, we were in and out of the court room, Chief Pool, Betty Phillips and myself, we went in and out and we took him a cup of coffee, sat around and drank coffee.

Q. Did you observe, before Mr. Sage went into the inner room to avoid the confusion, did you observe any one dictating the statement to Mr. Sage?

A. No, sir; he was sitting at the desk alone.

Q. And writing it out? A. Yes, sir.

Q. After he went back into the courtroom, where you say you and Miss Phillips were in and out, was any one dictating what to say to him then?

A. No, sir; he was in there alone part of the time, writing.

Q. Did you ever have occasion to see any wounds or injuries to Mr. Sage's body?

(Testimony of Al Ferguson.)

A. I did that evening, sir.

Q. Will you please tell the circumstances of that?

A. We were sitting drinking coffee and talking about the case and reports, etc., and Chief Pool asked me, he said, "Have you seen the marks on Sage," and I said, "No, sir." He said, "Sage, would you show the commissioner the marks you have," and he got up from his writing and undone his shirt and turned around and that was the first I saw any marks upon him.

Q. And you say those marks were shown to you at the suggestion [205] of Mr. Pool?

A. Yes, sir.

Q. You know Mr. Pool, do you not?

A. Yes, sir.

Q. Were you present at the time in the North Las Vegas police department on the 28th of February when Mr. Coite M. Gaither, Jr., was being interrogated?

A. Yes, sir.

Q. Do you know how Mr. Gaither got to the police station?

A. Yes, sir.

Q. How did he get there?

A. It seems to me it was about 6:00 o'clock, after I got off work, I believe it was, Vic Carlson—there were three of us, Vic Carlson and one of the other officers and myself—went to the Las Vegas police department and picked up Gaither, took him back to the North Las Vegas police department.

Q. Where did you pick him up?

(Testimony of Al Ferguson.)

A. From the Las Vegas police department, out of their jail.

Q. And you took him to the North Las Vegas police department, is that right?      A. Yes, sir.

Q. What happened then, after you got there?

A. As we were going down to North Las Vegas, I was sitting on the right-hand side, the other officer was driving, Vic Carlson was sitting directly behind the driver and Gaither sitting behind [206] me and we were talking to Gaither, that we wanted to find what he had done and he kept saying, "No, I don't know a thing about it." He said, "You have the wrong party."

Q. Was Mr. Pool present at that time?

A. No, sir.

Q. Go ahead.

A. And we knew that two of the lads, one of the fellows involved or indirectly involved, and another girl had brought a large sack to the police department that evening, with the money in it. We had the evidence already and we were kidding him about confessing and so on and he still pleaded innocence and when he walked into the police department, I forget which officer it was at the desk, pulled out this big sack and held it to him as he walked in and said, "Do you recognize this?" He kind of put his head down and said "Yes," and he started breaking then, admitting.

Q. He started admitting the burglaries he had committed?



(Testimony of Al Ferguson.)

A. That is right. I believe we also told him that Sage had admitted it. I am not sure of that.

Q. What happened then?

A. We sat around there interrogating him and talking to him and getting a little bit on him, what happened, and he kept telling us——

Mr. Babcock: May I inquire who was present?

Q. Please tell us who was present. [207]

A. Chief Pool, myself, Gaither, and I believe Vic Carlson, I am not sure—yes, Vic was there, because he had been with us and he kept telling us—well, it is a little vague what he said, I don't remember too much what happened. We asked him where he had dumped the machines and he said, "Well, I can't tell you, I will have to take you there, I can show you." So Chief Pool said, "Well, if we take you out there, will you know where they are at," and he said, "Yes, I am pretty sure I can find the place," so they said, "Let's go find it," and I believe it was Chief Pool and Vic Carlson and Gaither, they asked me to go, did I want to go to the country with them and I said, "No, I will wait for you to come back."

Q. That was what time, would you say?

A. I believe that must have been approximately 7:00 or 8:00 o'clock.

Q. And did they leave then?

A. Yes; they did.

Q. Did you see them at any time later that evening?

A. When they brought the machines back.

(Testimony of Al Ferguson.)

Q. How long was that before they brought the machines back?

A. I would say it was about an hour.

Q. And at that time Mr. Carlson and Chief Pool and Mr. Gaither all returned? A. Yes, sir.

Q. And you were still there? [208]

A. Yes, sir.

Q. What happened after they returned?

A. I believe then—I believe Gaither sat down to make his statement, I am not positive of that. That did transpire that evening.

Q. Did you see Mr. Gaither when he was making the statement?

A. Yes, we were just sitting around.

Q. Was any one dictating the statement, or was he making it himself?

A. There was no dictation made to any of these people, to my knowledge.

Q. Have you ever been in the Oxford Club, Mr. Ferguson? A. Yes, sir.

Q. Have you ever been there in company of Mr. Gaither? A. Yes, sir.

Q. Who else was present when you and Mr. Gaither were at the Oxford Club?

A. Chief Pool, Vic Carlson, I believe, I am not sure, I believe Ramona Pool was working that evening, but six of us went over and sat in this booth.

Q. What evening was it that you and Chief Pool and Mr. Gaither and Vic Carlson were all present at the Oxford Club?

(Testimony of Al Ferguson.)

A. That was the night of the 28th.

Q. That same evening? A. Yes, sir. [209]

Q. What happened when all of you were there?

A. It seems like all of the details of this case was finished, except some typing, etc., and no one had eaten supper yet and I said, "If you fellows haven't eaten," I said, "I will take you over and buy your supper," and we asked Gaither if he had eaten and he said no he hadn't, so he joined us and we went over to the Oxford Club and every one, I believe, ordered steaks except Gaither.

Q. What did Gaither order?

A. Gaither ordered a bowl of tomato soup, and I started kidding him about the high living he had done in the past and he said, "Well, my stomach is just upset." He said, "I just had too much drinking, I just can't hold a steak." I said, "Well, order what you want." I said, "I may never buy you a steak again," and he ordered a bowl of soup.

Q. Mr. Ferguson, I show you, for the purpose of identification, document consisting of four pages, which have been designated defendants' Exhibit B, and ask you to examine the margin on the fourth page of this document and tell me whether or not you recognize this writing there in the margin?

A. That is my writing.

Q. And what does it say?

A. Witness Al Ferguson.

Q. Is that your signature, "Al Ferguson"?

A. Yes, sir. [210]

Q. Did you at anytime inform Mr. Gaither of

(Testimony of Al Ferguson.)

your official position?      A. Yes, sir.

Q. You had told him that you were police commissioner of North Las Vegas?

A. When we picked him up at the city jail, on the way to North Las Vegas from the city jail, I hold him who I was.

Q. At any time did Mr. Gaither complain to you having been beaten?      A. No, sir.

Q. Now, you told us that Mr. Sage, at Chief Pool's suggestion, showed you his injuries. Was there any conversation between you and Mr. Sage about that?

A. I asked Mr. Sage, I said, "Man, how did you get those," and he just said, "You know," just shrugged his shoulder. I said, "I don't know." He didn't answer me any more.

Mr. Watson: Your witness, your Honor.

#### Cross-Examination

By Mr. Babcock:

Q. Mr. Ferguson, are you at the present time police commissioner of North Las Vegas?

A. No, sir.

Q. When was that office terminated?

A. May of 1956.

Q. As police commissioner, what were your duties?      A. I was also councilman. [211]

Q. As police commissioner, what were your duties?

A. More or less to be a liaison between the police department and the public.

(Testimony of Al Ferguson.)

Q. Did you spend much time at the North Las Vegas police department?      A. Yes, I did.

Q. Did you assist, on occasions, in the investigating of cases?      A. Interrogating, yes, sir.

Q. You acted more or less as a police officer?

A. No, sir.

Q. Referring to this defendants' Exhibit B, which was shown to you by counsel, for identification, which appears to be a photostatic copy of an original. Did you see the original of this statement?

A. Yes, sir.

Q. What was the color of the paper?

A. I believe it was white.

Q. Was the writing on it in pencil or ink?

A. I believe—it is two years ago, I can't recall.

Q. Do you recall if you signed it in pencil or ink?      A. I believe my signature was in ink.

Q. After you signed this document, what happened to the original?

A. The original, sir, it was taken to the grand jury by the [212] D. A.'s office.

Q. By whom?      A. By Chief Pool.

Q. How do you know that?

A. All those papers were taken. They requested that they be brought. I trusted Chief Pool.

Q. You entrusted or trusted?

A. I trusted. They were in the police department and the County Grand Jury asked for the papers when they were investigating the case.

Q. When was the last time you saw this original?



(Testimony of Al Ferguson.)

A. I wouldn't know, sir, to be exact. A few days after this.

Q. Would you consider the original of this document to be an official police record?

A. It should be.

Q. Do you know where the original is today?

A. No, sir.

Q. While at the Oxford Club do you know if at any time Coite Gaither left your company and went to the men's room?

A. I wouldn't know that, sir.

Q. Do you know if at any time while at the Oxford Club he was ill?      A. No, sir.

Q. You didn't know that?

A. He wasn't ill to my knowledge. [213]

Q. Do you know if he had occasion to vomit at sometime during the period of time he was in the Oxford Club?

A. No, I never seen him. I could see if he went to the rest room.

Q. If he went to the rest room, it would be certainly in the company of an officer, wouldn't it?

A. Well, he couldn't leave the rest room.

Q. On the evening of February 28, 1956, I believe you testified that certain officers went out to pick up the slot machines, is that correct?

A. That's right, sir.

Q. Who were those officers?

A. Chief Pool, Vic Carlson and Gaither.

Q. Do you know if there was another trip made

(Testimony of Al Ferguson.)

that evening while you were there by any of these officers?      A. Not to my knowledge.

Q. Do you know if Vic Carlson and officer Clifton made a trip that evening?

A. Not that I recall.

Mr. Babcock: Nothing further, your Honor.

Cross-Examination

By Mr. Matteucci:

Q. Mr. Ferguson, the evening of February 28th was Mr. Clifton in the police station, do you know?

A. I believe he was in there, not being with us when we went after Gaither. I am pretty sure he was there most of the [214] evening.

Q. And at the time Chief Pool and Detective Carlson took Gaither out to receive the slot machines, Mr. Clifton wasn't with them?

A. No, he didn't go with them. There were only three of them.

Mr. Matteucci: That is all.

Mr. Watson: No further examination.

(Witness excused.)

BILLY RICHARD LEEDS

a witness on behalf of the Defendant Pool, being duly sworn, testified as follows:

Direct Examination

By Mr. Watson:

Q. Will you state your name please?

A. Billy Richard Leeds.

(Testimony of Billy Richard Leeds.)

Q. Where do you live?

A. Route 1, Box 264.

Q. Mr. Leeds, where are you employed?

A. With the United States postoffice.

Q. Here in Las Vegas? A. Yes.

Q. Where were you employed on or about February 27th and February 28th, 1956?

A. At the North Las Vegas police department.

Q. You were an officer of that department?

A. Yes, sir.

Q. Do you recall whether or not you were on duty on February [215] 27, 1956?

A. Yes, I was.

Q. What hours were you on duty during that date?

A. From seven a.m. in the morning until three p.m. in the afternoon.

Q. What particular job were you fulfilling that day? A. I was desk officer.

Q. Desk officer in the station? A. Yes, sir.

A. At any time during those hours, seven a.m. to three p.m., did you leave the station?

A. No.

Q. You did not leave for lunch?

A. No.

Q. Do you know Coite M. Gaither, Jr.?

A. Yes.

Q. Do you know Ray Lewis Sage, Jr.?

A. Yes.

Q. Did you have occasion to see Mr. Ray Lewis Sage, Jr., on February 27, 1956?

(Testimony of Billy Richard Leeds.)

A. Yes, sir, I did.

Q. What time, approximately, did you first see Mr. Sage?

A. Approximately nine in the morning.

Q. And where did you see him?

A. When he was brought to the station. [216]

Q. Do you know, of your own knowledge, how long Mr. Sage remained in the station after having arrived at nine a.m. on February 27th?

A. Until about two thirty or three in the afternoon that day.

Q. He did not depart at any time between nine a.m. and about two thirty?

A. No.

Q. Was he under your personal observation during that entire time?

A. I couldn't see him all the time, but I could see him, due to the situation of the different offices.

Q. Could he have left the station without your knowledge?

A. Well, he probably was taken to the back of the room, to the men's room, without my knowledge, with an officer.

Q. I mean could he have walked clear out?

A. No, not leave the place without my knowledge.

Q. Did you observe at any time Mr. Sage being physically mistreated?

A. No, sir, I did not.

Q. Did you at any time observe any duress or coercion being applied to Mr. Sage for making of a

(Testimony of Billy Richard Leeds.)

statement?      A. No, there was no——

Mr. Babcock: We object, your Honor, there is insufficient foundation for such an answer from this witness.

Mr. Watson: I will withdraw the question. [217]

Q. Did you have occasion to see Mr. Coite M. Gaither on that date, February 27th?

A. Yes, sir, I did.

Q. When did you first see Mr. Gaither?

A. At about nine o'clock in the morning.

Q. And where did you see him?

A. When he was brought to the station with Sage.

Q. And how long did he remain in the police station, if you recall?

A. He was there until approximately twelve thirty, when he left the station for approximately an hour and he was brought back.

Q. By whom was he accompanied from the station?      A. Mr. Pool and Victor Carlson.

Q. Did you see Coite M. Gaither at anytime after he left the station?

A. Not until he came back in.

Q. But you were there when he returned?

A. Yes, sir, I was.

Q. About an hour later?      A. Yes, sir.

Q. Who accompanied him when he returned?

A. Mr. Pool and Victor Carlson.

Q. Did you observe any excess amount of dirt or sand or gravel on Mr. Gaither's clothes when he returned? [218]



(Testimony of Billy Richard Leeds.)

Mr. Babcock: Objected on the ground not sufficient foundation.

Mr. Watson: I will withdraw the question.

Q. Did you have occasion to observe the appearance of Mr. Gaither as he left the station with Mr. Carlson and Mr. Pool?      A. Yes, sir.

Q. Did you have occasion to observe the appearance of Mr. Gaither when he returned with Mr. Carlson and Mr. Pool?      A. Yes, sir, I did.

Q. Did you notice any significant change in the appearance of Mr. Gaither from the time he left until the time he returned?

A. No, sir, I did not.

Q. By that I mean change in what you observed, his face and also his clothing?

A. The only thing I noticed, he had taken his tie and loosened.

Q. You told us that you recall that Mr. Sage left the police station on that day, February 27, 1956, a time between two-thirty and three p.m. Do you recall with whom he left?

A. I beg your pardon—will you repeat the question?

A. I say you testified that Mr. Sage left the police station on February 27th?      A. Yes, sir.

Q. Between two-thirty and three p.m.?

A. Yes, sir.

Q. Do you recall who went with him? [219]

A. Captain Clifton and Mr. Carlson, I believe, I am not sure.

Q. And when did you, yourself, leave?

(Testimony of Billy Richard Leeds.)

A. I left at three p.m., sir.

Mr. Watson: That's all.

### Cross-Examination

By Mr. Matteucci:

Q. Mr. Leeds, do you know how Mr. Gaither was dressed at the time he left the North Las Vegas police department?

A. He was wearing a dark blue suit, shirt and tie.

Q. And he was meticulously dressed, is that right? A. He had been all day.

Q. When he came back, did you notice any dirt on his pants? A. No, sir, I did not.

Q. Do you think you would have noticed any dirt, had he had dirt on his pants?

A. I think I would.

Q. You say, Mr. Leeds, drawing attention to Mr. Sage, you say he left with Mr. Clifton and Mr. Carlson between two-thirty and three p.m. that afternoon, is that correct? A. Yes, sir.

Q. Do you know where he was going?

A. They were taking him to the Henderson jail.

Q. About the 27th of February, 1956, Mr. Leeds, was the North Las Vegas department in an area, a closed area of a small nature?

A. Yes, sir, it was. [220]

Q. Could you describe to the jury about how big that police department was?

A. Yes, sir. My office was approximately twelve

(Testimony of Billy Richard Leeds.)

feet wide by eighteen feet long, eighteen to twenty feet long, situated right next to the Chief's office, which was approximately three times as large. There was a door or an opening—there was no door—there was an opening separating the two offices and my desk was situated right by the door leading into the Chief's office, so that I could see that office at anytime that I looked.

Q. And were there chairs distributed around the building for prisoners and other people to sit on?

A. Yes, sir, there were. There were four or five chairs in there.

Q. I believe, Mr. Leeds, you testified Mr. Sage may have gone in the back room to the rest room, but he could not have left the office without your noticing, is that correct?

A. That is correct, sir.

Q. Do you know where Mr. Sage was sitting in that police station?

A. Yes, sir, I do. He was sitting in the Chief's office on the right side of the room, up against the wall. That was directly—well, I would have to go through the door and look to the right in order to see him.

Mr. Matteucci: That's all. [221]

### Cross-Examination

By Mr. Babcock:

Q. Mr. Leeds, when did you commence your employment as police officer with the North Las Vegas police department?

A. January 13, 1956.

(Testimony of Billy Richard Leeds.)

Q. And who hired you?

A. Captain Clifton.

Q. And when did your employment terminate as police officer?      A. April 30, 1956.

Q. How long had you known Captain Clifton prior to your employment?

A. I had never known him before, sir.

Q. On February 27, 1956, isn't it fair to say, Mr. Leeds, that there was a considerable amount of commotion at the North Las Vegas police department?

A. Not considerable, no, I wouldn't say that.

Q. Weren't there a number of prisoners—

A. No, sir.

Q. —being brought back and forth and in and out of the police station during that day, during your period of duty?

A. I don't remember.

Q. You don't remember?      A. No, sir.

Q. How many times would you say that Chief Pool came and went while you were on duty that day?

A. I can't say how many times he came and went. [222]

Q. When was the first time when you observed Chief Pool leave?

A. He came in first about ten o'clock in the morning the first time I saw him. He left about an hour or so later.

Q. Did you observe with whom he left?

(Testimony of Billy Richard Leeds.)

A. He left with no one.

Q. Did he go out the front or back door?

A. Front door, right in front of my desk.

Q. What were your duties on that day?

A. I was desk officer and radio dispatcher.

Q. That is desk sergeant?

A. Well, I wasn't sergeant.

Q. You were booking prisoners?

A. Yes, sir.

Q. Did you have occasion on that day to book Ray Lewis Sage?

A. I didn't do the booking myself. There were secretaries that took care of that.

Q. Was it done at the time Sage was brought into the police station?

A. I don't know.

Q. Was Coite Gaither booked at the time he was brought into the police station?

A. I don't know.

Q. Do you know Ramona Wolf?

A. Yes, I do.

Q. Was she on duty that day? [223]

A. Yes, she was.

Q. She has testified, Mr. Leeds, that she observed at one period of time during the day, Chief Pool, Vic Carlson, Captain Clifton and Ray Lewis Sage in an automobile. Did you have occasion to make such an observation?

A. No, sir, I did not.

Q. Why was that?

A. I didn't see Sage leave that office. Sage did



(Testimony of Billy Richard Leeds.)

not leave that office. I know that Carlson and Chief Pool were in and out that office quite often.

Q. What office?

A. The main office in the police department. When the Chief took Gaither out for about an hour, Captain Clifton stayed in the office and Sage was there in the office with him at the time, and I would say it was about an hour that they were gone and Sage was right there with Clifton in that office.

Q. During the course of that day and while on duty, did you have occasion to observe any officer take Coite Gaither out of the station and to another police car?

A. The only officer I saw take Gaither out was Pool and Carlson.

Q. And where did they take him, do you know?

A. I do not know, sir. All I know that they were gone for about an hour.

Q. Now, your testimony is that Ray Lewis Sage remained in the [224] police station from the time of his arrival at nine o'clock until about two-thirty or three o'clock in the afternoon, is that correct?

A. Yes, sir, he did.

Q. Was he given any food during that period of time?

A. No, I don't think so.

Q. What was he doing during that period of time?

A. Sitting in a chair in the Chief's office.

Q. Just sitting all that period of time?

A. Yes, sir. Captain Clifton questioned him for

(Testimony of Billy Richard Leeds.)

an hour or so, then he let him sit because he didn't get any satisfaction, I suppose. I didn't listen to the questioning.

Q. Do you know if Ray Lewis Sage was under arrest at two-thirty that day?

A. They had been arrested that morning.

Q. By whom?

A. Carlson and Officer Frankford.

Q. Do you know if they were booked after the arrest?

A. They should have been. I did not watch the proceedings in the office, but if they weren't I wouldn't know.

Q. If you didn't watch the proceedings in the office, perhaps there are a lot of other things you did not watch, is that a fair assumption?

A. Yes, sir.

Q. And is it a fair assumption that there were a lot of people [225] that could have come in and gone out of that police station while you were attending to other types of work?

A. Yes, but every person who came in and out of that office had to pass my desk.

Q. Are we to believe that you were sitting at your desk—what were the hours of your duty?

A. Seven to three. No, not always at my desk.

Q. You were moving about the police station?

A. Well, it wasn't my usual way.

Q. You could have?

A. Yes, when I went to the back room.

Q. You did go to the back room?

(Testimony of Billy Richard Leeds.)

A. A couple of times.

Q. So when you went to the back room it is fair to assume that people could have come in and out that door past your desk without your discovering them?

A. Yes, sir.

Q. Now, it is your testimony that Ray Lewis Sage remained at the police department from nine until two-thirty or three in the afternoon?

A. Yes, sir.

Q. And then he left?

A. Yes, sir.

Q. With whom?

A. With Clifton and Carlson and Gaither. [226]

Q. All three were in the car?

A. Yes, all went out and got in the police car and left.

Q. In one car?

A. Yes, sir.

Q. What car was it, do you know?

A. I don't recall, sir. It was a police car, an official car.

Q. Did you observe all four of them enter the car?

A. I saw them all gather around the car to get in. They might have taken another car afterward.

Q. What is that?

A. They might have taken two cars, I don't know. I saw them all gather around one car and at that time we were right in the midst of changing shifts and I didn't pay too much attention how they left the station, although I know they all went out at this time together to get in the car and leave for Henderson.

(Testimony of Billy Richard Leeds.)

Q. And it is your belief all four of them left in one car? A. Yes, sir, it is.

Q. Did you know where they were going?

A. I presumed Henderson. I heard they were taking him to the Henderson jail because of the fact there were no openings in the Las Vegas City Jail or County Jail, where we usually took the prisoners.

Q. What time of day was it that Gaither and Sage were booked at Henderson? [227]

A. I have no idea. I was off duty at the time they got there. They left our station between two-thirty and three-thirty.

Q. En route to Henderson? A. Yes.

Q. Did you have occasion to check the booking records on their return to determine how long they had been incarcerated at Henderson?

A. No, sir, I did not.

Q. But they were filed at the Henderson city jail, is that right?

A. Yes. May I say something, sir—you asked me if they were filed at the Henderson jail. I presume they were. I don't know if they were or not.

Q. Did you observe how Sage was dressed when they first came into the station at nine o'clock?

A. Shirt and trousers. I don't remember the colors, but I believe a light shirt.

Q. Did you have occasion to observe the physical appearance of all prisoners that come in and out of the North Las Vegas police station?

(Testimony of Billy Richard Leeds.)

A. Well, I trained myself a little bit at the time to look at people, so I could recognize them again if I saw them.

Q. By the face?           A. By the face.

Q. But you are not particularly interested in what they are [228] wearing, isn't that a fair statement?           A. Well, no, I don't think so.

Q. Who were some of the other people in the jail that day, the North Las Vegas police department?

A. Officers were in and out. Sgt. McKrug was there that morning; officer Crawford was there, but they were both on grave-yard shift and they left early that morning, after about nine o'clock, and I don't recall who the officers were that were on duty during the day shift.

Q. You don't recall?

A. No, sir, I do not. I am trying to think, but I can't think of his name. I know who he is, but I can't think of his name.

Q. Did you observe any other prisoners?

A. I never observed any other prisoners, no. Yes, Fritzel was brought in with Gaither and Sage.

Q. Do I understand your testimony correctly that Gaither and Sage were brought in together, is that correct?           A. Yes.

Q. They were brought in together?

A. I believe so. I am not sure. It was right close to the same time if they were brought in separately.

Q. Who brought in Sage and Gaither?



(Testimony of Billy Richard Leeds.)

A. Carlson and officer Crawford brought them in that morning at nine o'clock.

Q. Together, is that your testimony? [229]

A. I will say Gaither might have been brought in just a little later, I don't know who he was brought in with if he wasn't brought in at that time.

Q. According to your testimony Gaither was brought in about nine o'clock also?

A. Yes, sir.

Q. And he stayed at the station for how long?

A. Twelve to twelve-thirty, I believe, something like that.

Q. What was he doing during that period of time?

A. Sitting in the corner in the Chief's office in a chair.

Q. Doing what?                      A. Nothing.

Q. Just sitting?                      A. Yes, sir.

Q. Was he under arrest at that time?

A. I presume so, yes.

Q. Well, do you know?

A. No, sir, I did not see the arrest made.

Q. As a booking officer, it would be your responsibility?

A. I wasn't actually booking officer. I was radio dispatcher and taking care of people that came in the front office. We had secretaries that did the actual booking at the time, such as Ramona Wolf, she was there at the time and she was booking, taking care of the actual booking.

(Testimony of Billy Richard Leeds.)

Q. Ramona Wolf also did dispatching, didn't she? [230]      A. Yes, at times.

Q. And she did dispatching on February 27th, did she not.

A. When I stepped out of the office she might have.

Q. Someone had to?

A. Yes, someone has to be on the radio at all times.

Q. And Ramona Wolf, that was part of her duty, was it not?

A. No, she was hired as a secretary.

Q. But she handled radio dispatching?

A. She did handle radio, yes, only once in awhile.

Q. You wouldn't call Ramona Wolf a booking sergeant, would you?      A. No, sir.

Q. Would that be her duty, to book and arrest prisoners?

A. No, sir, I don't think it would be. There was a secretary on that usually did the booking and another secretary on that did the typing and booking, typing up of the booking report.

Q. As a radio dispatcher, was it your duty to handle the radio log?

A. Yes, sir, it was.

Q. During your duty shift?

A. During my duty shift, yes, sir.

Q. Were you handling the radio log from February 27, 1956, going into the first two or three weeks of March, 1956?      A. Yes, sir.

(Testimony of Billy Richard Leeds.)

Q. May I ask you, Mr. Leeds, did you have occasion to log car [231] No. 10 from Las Vegas, Nevada, to Los Angeles, California and return in the fore part of March, 1956?

A. No, sir.

Q. Did you have occasion, Mr. Leeds, to log police car No. 10 of the North Las Vegas police department, from Las Vegas, Nevada to Baker, California and return the fore part of March, 1956?

A. No, sir.

Mr. Babcock: Nothing further, your Honor.

Mr. Watson: No further questions.

(Jury admonished and morning recess taken at 11:05.)

11:20 A.M.

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.)

ARTHUR DAVIDSON

a witness on behalf of Defendant Pool, being duly sworn, testified as follows:

Direct Examination

By Mr. Watson:

Q. You are the same Lt. Arthur Davidson who previously testified in this case?

A. Yes, sir.

Q. And you are the official custodian of the records of the North Las Vegas police department?

(Testimony of Arthur Davidson.)

A. Yes, sir.

Q. Lt. Davidson, did you receive, on behalf of Mr. Pool, a subpoena duces tecum to produce certain documents today? [232]

A. I did.

Q. Will you please show me the first document which you have?

A. This is a complete radio log from February, 1956, of the North Las Vegas police department.

Q. Do you have there in the log the portion of it which relates to the log notes of February 27, 1956?

A. Yes, sir.

Q. Will you please take out those pages?

A. Begins at 12:02 a.m. on the morning of the 27th, runs through to 11:58 p.m. the night of the 27th.

Mr. Watson: May I ask that the clerk mark for identification the eight sheets of paper heretofore designated by Lt. Davidson.

Q. Lt. Davidson, I show you what has been marked, for the purpose of identification, Defendant's Exhibit E, and ask you to examine it, eight pages so designated collectively, and tell me whether or not it is the record which you have just testified as being a portion of official records of the North Las Vegas police department?

A. It is; yes, sir.

Mr. Watson: At this time, if the Court please, the Defendant Pool offers in evidence Defendant's Exhibit E.

Mr. Babcock: No objection, your Honor.

(Testimony of Arthur Davidson.)

The Court: The offer will be received in evidence as Defendant Pool's Exhibit E. [233]

Q. If you please, Lieutenant, will you please examine this defendant's Exhibit E and inform the Court and the jury if such information appears, who is stated to be in charge of the desk at seven a.m., February 27, 1956?

A. At seven a.m., February 27, 1956, the desk officer was Leeds.

Q. And will you please make a further examination and tell whether or not the logs which you now hold show the time of termination of duty of Desk Officer Leeds on that date, February 27th.

A. At three p.m. February 27, 1956, Desk Officer Hume took over.

Q. And does the exhibit show who was desk officer immediately prior to that time?

A. Desk Officer Leeds.

Mr. Watson: Thank you, Lieutenant. Pass the witness.

Direct Examination

By Mr. Matteucci:

Q. Mr. Davidson, you were requested by subpoena duces tecum to bring the original statement signed by Ray L. Sage, dated February 28, 1956, is that correct? A. That is correct.

Q. You brought that with you?

A. There is no such statement in the files.

Q. In the files of the North Las Vegas police department? A. No, sir. [234]



(Testimony of Arthur Davidson.)

Mr. Matteucci: Your Honor, at this time the defendants wish to submit this photostatic copy of the original into evidence, the original being gone.

The Court: The Court will reserve its ruling.

### Cross-Examination

By Mr. Babcock:

Q. Lt. Davidson, you were asked if you would examine the files to determine if you had the original of a statement which was shown to you as defendants' Exhibit B for identification. May I ask of you at this time, have you examined the files and records of the North Las Vegas police department, with reference to the investigation and the disposition of the matter involving Ray Lewis Sage and Coite Gaither?

A. Yes, sir.

Q. Were you able to find in the official records or files of your department any statements of either Ray Lewis Sage, Jr., or Coite Gaither, Jr.?

A. No, sir, there was no statements at all.

Q. Directing your attention to defendants' Exhibit E, I invite your attention to a page of this radio log at a scheduled time of 10:59 a.m. on 2/27/56. Would you translate that particular entry?

A. Start with the number of car, 14—"Have a car meet me at Grande Court Unit 15. Time 10:59 a.m."

Q. On that same page can you determine if a police car was dispatched to that address, Unit 15, Grande Court, or [235] responded to that call?

(Testimony of Arthur Davidson.)

A. Not on this page, no.

Q. Directing your attention to page 2 of the radio log, defendants' Exhibit A, I will ask you to translate the entry under the time of 2/27/56, 8:44 p.m.

A. 8:44 p.m., 2/27/56. The message was from 509, call Las Vegas police station, 2517, which is Henderson police station. Message was: "What was name of 15? Need Medical care." Answer: "Ray L. Sage, 3:44 a.m." Fifteen means prisoner.

Q. Directing your attention, Officer Davidson, to date February 27, 1956, would you examine this log for the entries between the time of two o'clock p.m. and four o'clock p.m., and state if any entries were made for dispatch of the police car from North Las Vegas police department to Henderson city jail?

A. Yes, sir—disregard this—no, sir, there was no, between two and four p.m., February 27th, there was no car dispatched to the Henderson jail.

Mr. Babcock: That's all.

### Redirect Examination

By Mr. Watson:

Q. Now, Lt. Davidson, these are the radio logs that you produced, are they not? A. Yes.

Q. They reflect calls made in and out of the station by radio? A. Yes, sir.

Q. And they do not necessarily reflect activities in the station [236] that had nothing to do with radio calls, is that correct?

(Testimony of Arthur Davidson.)

A. If radio wasn't used, it wouldn't reflect on this log.

The Court: Will you please return to the chair, Mr. Davidson?

Q. Mr. Davidson, on the 27th of February, 1956, and immediately before that time, you were the official custodian of all of the records of the North Las Vegas police department?

A. No, sir, I was not at that time.

Q. When did you take over that particular duty?

A. October of 1956.

Q. And you said, in response to subpoena issued in this matter, you have searched your records, as you now have them, for the purpose of obtaining the original statement made February 28, 1956, purportedly made in the handwriting of Ray Lewis Sage, Jr.?

A. Yes, sir.

Q. I show you this photostatic copy and ask you if you have ever seen that before, or have you seen any document at anytime, during the period in which you were official custodian of the official records of the North Las Vegas police department?

A. No, sir, I have seen nothing similar to this.

The Court: Do you desire any questions, counsel? [237]

Mr. Watson: No, your Honor.

(Witness excused):

The Court: Let the record show that the Defendant Pool rests his defense in chief, subject to the

right to present one additional witness. The name of this witness is what?

Mr. Watson: Mrs. Phyllis Harrison.

The Court: Now, Mr. Matteucci, as counsel for the Defendant Clifton, do you have any witnesses?

Mr. Matteucci: Yes, your Honor. I would like to call Mr. George Dickerson, District Attorney.

GEORGE DICKERSON

a witness on behalf of the Defendant Clifton, being duly sworn, testified as follows:

Direct Examination

By Mr. Matteucci:

Q. Will you tell the Court your name?

A. George Dickerson.

Q. Are you the district attorney of Clark County? A. I am.

Q. Mr. Dickerson, how long have you been district attorney of Clark County?

A. Since January 1, 1955.

Q. Is the Clark County grand jury under your jurisdiction?

A. I am advisor to the grand jury when in session.

Q. Did you have occasion to advise the grand jury regarding an investigation of the North Las Vegas police department in [238] the spring of 1956?

A. With reference to what matter?

Q. With reference to the alleged beating of two

(Testimony of George Dickerson.)

prisoners held in custody of the North Las Vegas police department in February and March of 1956?

A. In part, yes.

Q. You are here in response to a subpoena duces tecum, is that correct? A. I am.

Q. We were advised earlier this morning, in testimony by another witness, that during the course of this investigation a statement signed by a person by the name of Ray Lewis Sage was submitted to your office to be submitted to the Clark County grand jury. I ask you at this time, Mr. Dickerson, if you have brought with you the original of the statement signed by Ray Lewis Sage, dated 2-28-56, which was submitted to the Clark County grand jury at that time?

A. I can answer it in this way—I have extracted from the file relating to the case of Ray Lewis Sage duplicate original statement signed by Ray Lewis Sage with reference to the matter you refer to. Whether or not same was ever presented to the grand jury, I am not in a position to say.

Q. Do you have it with you?

A. I have duplicate original with reference to the case processed in the district court in relation to Ray Lewis Sage. [239]

Q. May I see it?

A. I beg your pardon—what date did you state?

Q. 2/28/56. Mr. Dickerson, do you have any other statements in your file signed by Ray Lewis Sage?



(Testimony of George Dickerson.)

A. I can't answer your question at this time, Mr. Matteucci. I didn't examine my file with reference to any other than requested.

Q. Do you have any other statement signed by Ray Lewis Sage dated February 28, 1956, in your file?

A. There may be. I have no knowledge at the present time. I would be happy to check in relation to the request by the subpoena duces tecum.

Q. I am asking you, do you have any other statement?

A. I have no way of knowing. All I did was to look in the file this morning for the purpose of determining if a statement of such a date was in our file, which was used in the case of Ray Lewis Sage when prosecuted for burglary. Your subpoena was what—one before the grand jury. I have no way of knowing; I didn't present this matter to the grand jury.

Q. This statement is in your file regarding the burglary?

A. That is correct.

Q. You did not bring any statements regarding investigation of the grand jury in this matter?

A. I have no way of knowing what went before the grand jury. I didn't present that myself. [240]

Q. Do you have the original of that statement?

A. If there is such a statement, it would be part of the files of the district court with reference to activities of the 1956 grand jury.

Q. You don't have it?

A. I don't have any original statement. I have

(Testimony of George Dickerson.)

duplicate original of the statement submitted to our office.

Q. Do you have a statement similar to this, the original of this statement?

The Court: When you say "this," what do you refer to?

Q. This statement signed by Ray Lewis Sage, Jr., witnessed by Al Ferguson, police commissioner, and Victor Carlson, containing four pages, in the handwriting of Ray Lewis Sage. Do you have the original of that?

The Court: Is that Exhibit B?

Mr. Matteucci: Yes, your Honor.

A. Mr. Matteucci, I would be glad during recess to examine the files in my office. I have no independent knowledge at this time of the existence of such a statement in our files.

Mr. Matteucci: At this time, your Honor, defendants offer to place this into evidence again, on the basis due diligence has been shown to obtain the original. We are not aware of the original, have never seen it. This is the only evidence of this statement, which has been identified by Ray Lewis Sage as to the sheets and Al Ferguson as to his signature [241] and Vic Carlson as witness.

The Court: I would like to see the subpoena duces tecum with reference to the Witness Dickerson.

Mr. Dickerson: I was never served a subpoena.

Mr. Matteucci: This subpoena was typewritten by the clerk of the district court and the original taken to the marshal's office. I have a copy.

(Testimony of George Dickerson.)

The Court: There must be some confusion between this witness and what counsel sought to require. This subpoena reads insofar as it is pertinent: "Bring with you the original statement signed by Ray Lewis Sage which was submitted to the Clark County grand jury as to the North Las Vegas Police Department." Now you have answered that, Mr. Dickerson, in this manner, something to the effect that, as I understand it, you, as district attorney and the custodian of the criminal files, as distinguished from the grand jury proceedings, do not have in your files an original statement signed by Ray Lewis Sage, is that right?

Mr. Dickerson: Your Honor please, may I explain that? This matter was presented to our grand jury, but presented by two deputies in my office. I was engaged in a murder trial at the time. I have been informed that no statement was submitted. The statement that I have produced here is a statement, which [242] is a duplicate original, signed by Ray Lewis Sage, Jr., which was in the files of the case of the State of Nevada vs. Ray Lewis Sage, having to do with the crime of burglary, for which he was prosecuted and convicted. Now, what may have gone before the grand jury and what may be in their files, in relation to the grand jury, I am in no position to state at this time, and as I informed counsel, I would be only too glad, during the recess at noon to check with deputies handling this matter before the grand jury and search the files and see if there is such a statement Mr. Matteucci refers to.

(Testimony of George Dickerson.)

The Court: Now, will you let me see the so-called duplicate which you brought from your office. I will say frankly the Court is confused, to say the least. May I see Exhibit B again. Mr. Matteucci, perhaps you can help the confusion of the Court or otherwise shed light on this. The document which Mr. Dickerson brought and handed to you, as being a duplicate copy of the statement made by Ray Lewis Sage, Jr., February 28, 1956, in typewritten form, is a different statement, or is it the same identical statement purporting to be made and shown on defendants' B for identification?

Mr. Matteucci: I have not read the statement Mr. Dickerson presented thoroughly word for word, but from what I have read, it appears to be a different statement entirely. [243]

The Court: Certainly one is a carbon copy of an original typewritten statement, whereas the other purports to be a photostatic copy of long-hand statement, so apparently they are just not the same statements.

Mr. Matteucci: Thank you. That is all I have.

The Court: Now, do I understand this witness will be back after the noon hour and advise the Court and the jury whether or not he found any statement, after having made further search?

Mr. Matteucci: Yes, your Honor, I excuse the witness with that reservation.

Mr. Babcock: May I make this further observation of the Court—the government requests Mr. Dickerson to bring with him any and all statements



(Testimony of George Dickerson.)

of Ray Lewis Sage or Coite Gaither that are in his possession or custody which may relate either to the criminal matter or to statement to the grand jury.

The Court: Very well, Mr. Dickerson, you may be excused.

(Jury admonished and noon recess taken at 12:05 p.m.)

1.30 P.M.

(Defendants present with counsel and government counsel present. Presence of the jurors and alternate juror stipulated.)

The Court: Mr. Watson, are you prepared to put on the witness mentioned? [244]

Mr. Watson: I am, your Honor.

MRS. PHYLLIS LOUISE HARRISON

a witness on behalf of the Defendant Pool, being duly sworn, testified as follows:

Direct Examination

By Mr. Watson:

Q. Will you state your name, please, and address?

A. Phyllis Louise Harrison; 1807 North Fifth.

Q. Where were you residing in February, 1956?

A. 2560 North Main.

Q. What was your occupation?

A. I rented the Grande Motel.

Q. And you lived in the Grande Motel?

A. Yes, sir.



(Testimony of Phyllis Louise Harrison.)

Q. Do you know Ray Sage, Jr.?

A. Yes, sir.

Q. Do you know Coit Gaither, Jr.?

A. Yes, sir.

Q. Do you have any recollection of fights which concerned those two people on Sunday, the 19th of February, 1956?

A. On Sunday night, yes, sir.

Q. About what hour of the night?

A. Well, it was practically all night, but it came to a climax when I woke up in the morning.

Q. Will you please tell the Court and jury what occurred on that day?

A. Well, they had been creating a disturbance, along with quite [245] a few other boys, all night and I had repeatedly asked them to quiet down and they didn't pay any attention to me, so about four o'clock in the morning they were fighting in the driveway, so I had to call the North Las Vegas police department.

Q. By fighting, do you mean having hard words?

A. No, sir, they were using their fists.

Q. Would you describe it as very mild exchange of blows or severe?

A. Well, they were hitting pretty hard blows. I don't think the fight was anything mild. I think it was really a fight.

Q. Did you see either of the two people I have named, Sage or Gaither, anyplace?

A. Yes, sir, I saw Mr. Sage. I didn't see Mr. Gaither.

(Testimony of Phyllis Louise Harrison.)

Q. You saw Mr. Sage receive blows?

A. Yes, sir.

Q. Were they hard blows?

A. I thought they were, yes.

Q. Could you say approximately how many times you saw him hit?

A. No, sir, I couldn't, because I turned as soon as I saw what was happening and went back and called the police.

Q. Could you say what part of the body you saw him being hit?

A. No, I really couldn't.

Q. Did you see him kicked in any way?

A. No, sir, saw blows.

Q. You just saw blows with the fist? [246]

A. Yes, sir.

Mr. Watson: Pass the witness.

Mr. Matteucci: I have no questions.

Mr. Babcock: No questions, your Honor.

The Court: You may be excused. The Defendant Pool's case now stands submitted, is that right?

Mr. Watson: That is correct.

THOMAS N. FISHER

a witness on behalf of the Defendant Clifton, being duly sworn, testified as follows:

Direct Examination

By Mr. Matteucci:

Q. State your name, please, and address.

A. Thomas N. Fisher; 2607 East Charleston.

(Testimony of Thomas N. Fisher.)

Q. Where are you employed?

A. Fremont Hotel.

Q. Where were you employed in the month of February, 1956?

A. North Las Vegas police department.

Q. When did your employment with the North Las Vegas police department terminate?

A. July 16th.

Q. Did you have occasion, on the 27th of February, 1956, to be detailed to guard a prisoner by the name of Ray Lewis Sage? A. I did.

Q. Do you know Ray Lewis Sage?

A. Yes, sir.

Q. Will you tell the Court where you guarded such prisoner? [247]

A. At the Rosa de Lima Hospital, Henderson.

Q. Henderson, Nevada? A. Yes, sir.

Q. Did you know Mr. Sage personally before that time?

A. I had seen him quite a few times, yes, sir. He was stationed in the same squadron I was at Nellis Air Force Base.

Q. Would you say that you had a speaking acquaintance with Mr. Sage before this proceeding in February?

A. No, sir, I didn't. I had seen him in the squadron, that is all.

Q. Did you have occasion to talk to Mr. Sage at the time you were detailed to guard him in the hospital at Henderson, Nevada?

A. Yes, sir, I did. I picked him up at the Hen-

(Testimony of Thomas N. Fisher.)

derson police department and transported him to the Rosa de Lima Hospital. At the hospital he was checked in and given a room and issued some clothes. At that time Sage looked at me and stated, "If I knew they were going to put a guard on me, I would never have come to the hospital."

Q. Did he tell you why?

A. No, sir, not specifically.

Q. Did he say anything to intimate why?

A. He said——

Mr. Babcock: Just a moment—I think this calls for conversation and I object to questions that might resolve in conclusions of this witness. [248]

The Court: Ask the question in a different form.

Q. What did he tell you, Mr. Fisher?

A. He stated, "If I knew they were going to put a guard over me I never wanted to come to the hospital."

Q. Did he say why?

A. He said he had been drinking.

Q. Did you have any further conversation with him at that time?

A. No, sir. He went to bed at that time. I had no more conversation with him until the next morning.

Q. Did he tell you anything next morning?

A. He was getting X-rayed.

Mr. Babcock: We object—on foundation laid as to who was present, time and place.

The Court: I think the question was, "Did he

(Testimony of Thomas N. Fisher.)

tell you anything next morning." The answer is yes or no.

A. Yes, sir.

Q. Did you transport Mr. Sage back to the North Las Vegas police station that next day?

A. No, sir.

Mr. Matteucci: That's all, your Honor.

### Cross-Examination

By Mr. Babcock:

Q. Mr. Fisher, did you have occasion to see the physical appearance, primarily the chest and abdomen, of Sage while he was at the Rosa de Lima Hospital on February 27, 1956? [249]

A. No, sir; I do not recall.

Q. You didn't see his body?

A. No, sir. When I arrived at the station he was ready to go to the hospital and there he changed clothes in the hospital room. Clothes were issued there.

Mr. Babcock: Nothing further.

(Witness excused.)

### MR. DICKERSON

having been previously sworn, testified on further:

### Direct Examination

By Mr. Matteucci:

Q. Mr. Dickerson, have you examined your records? A. I have.



(Testimony of George Dickerson.)

Q. Of the grand jury investigation. Did you find the original of the statement, defendants' proposed Exhibit B, that you looked at this morning?

A. I might explain, Mr. Matteucci, at the time of this investigation before the Clark County grand jury, investigation involved a recall petition of North Las Vegas police. In checking the files with respect to the case of Sage and Gaither, I found nothing in relation to the statement to which you referred here. I checked the records in the clerk's office, records of exhibits that were admitted, and on the possibility that perhaps another B was in the records of the clerk's office, I consulted both deputies who presented the matter, the court reporter who took and transcribed the matter and all recall statement [250] referring to the existence of such statement given, but no such statement appeared to the grand jury. I did then go into the files in my office with reference to investigating the recall petition of the North Las Vegas police, then before the grand jury, and found a statement that purports, or looks to be identical with the statement to which you refer as defendants' Exhibit B. May I hand that to you at this time.

Q. Mr. Dickerson, has this statement been in your file all the time since it was submitted to your office?

A. All I can say, I assume so, Mr. Matteucci. It was found in the file. It was not in reference to the case here. As I explained, it was in the file, so I must assume it was in the file at all times from

(Testimony of George Dickerson.)

presentation to the Clark County grand jury until this date.

Q. Mr. Dickerson, I hand you this photostat and tell me, does that appear to be the same—does the photostat appear to be a copy of the original statement?

A. I would say that it is a photostat of the original that I have in my office.

Mr. Matteucci: At this time, your Honor, I am going to submit the original of defendants' proposed Exhibit B for the purposes of identification.

The Court: You wish to identify the original now or now offer it in evidence?

Mr. Matteucci: I wish to identify it and put the original [251] in evidence.

The Court: Any objection to the original?

Mr. Babcock: I would like to see it, your Honor. I am sure there is no objection to it. We have no objection to the original, defendants' Exhibit F, going into evidence, your Honor.

Mr. Matteucci: Your Honor, this is just the original of proposed Exhibit B.

The Court: You want to withdraw B?

Mr. Matteucci: I will withdraw defendants' Exhibit B.

The Court: The offer will be received in evidence and will be marked Exhibit B in lieu of the Exhibit B heretofore presented for identification.

Mr. Matteucci: That is all I have, your Honor.

(Testimony of George Dickerson.)

### Cross-Examination

By Mr. Babcock:

Q. Mr. Dickerson, I believe you testified this morning that you had participated in part in the matter of presentation of this matter to the Clark County grand jury. What did you mean when you said in part?

A. I was not present during any time when the evidence was submitted. I was present outside after the conclusion of the matter. Questions as to the legal problems involved, as to what crimes, if any, could be determined by the grand jury were asked of me, at which time I informed the grand jury that it was without jurisdiction to entertain any action in this regard, in that [252] the evidence adduced constituted at the most a misdemeanor offense; that the grand jury is an arm of the district court and can return an indictment only on matters tried with the district court.

Mr. Watson: I think Mr. Dickerson's legal opinion in the matter of the State law of Nevada in the matter of the grand jury is not proper at all, as being prejudicial and should be stricken.

The Court: Let me make this very obvious observation. Counsel are not permitted to sit idly by and allow inadmissible matter to go into the record and thereafter gamble on the chance of it being favorable or unfavorable and moving to strike. They are required to make objections to questions

(Testimony of George Dickerson.)

asked. Now this Court was aware of it as soon as that question was asked, but you didn't see fit to make the objection. Objection overruled.

Q. Mr. Dickerson, from your testimony at the commencement of the afternoon session, I understand you have had an opportunity to search the files and records of your office, concerning any statements taken in conjunction with the matter relating to Ray Lewis Sage and Coite Gaither?

A. I have.

Q. I will ask you, aside from——

The Court: At this point, the Court would like to make this observation, in ruling on the motion to [253] strike. I am sure you are not under the impression the Court treats a particular line of testimony, so any time you have objections, you make them.

Q. Were you able to find any other statements made by either Gaither, Sage, or any other person, in conjunction with the matter relating to Sage and Gaither?

A. I was. I have here statements dated 27th February, 1956, 9:45 p.m., present, Mayor James B. French, M.D., J. H. Coogan, M.D.

Mr. Matteucci: The statement is already in evidence.

Q. May I ask if that statement you are presently testifying to corresponds to defendants' Exhibit A in evidence?

A. I have an exact duplicate of defendants' Exhibit A, with the exception, of course, of the notar-

(Testimony of George Dickerson.)

ial seal and the written signature appearing thereon, this being a copy thereof.

Q. Do you have any other statements?

A. I have a statement of Coite M. Gaither, alias Corky, consisting of two pages, signed by Coite M. Gaither, witnessed by E. E. Clifton and Sgt. Ball S. Smith, taken by Donna M. Worth, subject interrogated by W. G. Bull, Chief of Police.

Q. May I see it. Do you have any other statements?

A. I have what I showed to Mr. Matteucci this morning, a statement, duplicate original, of Ray L. Sage, dated February 28, 1956, witnessed by Victor Carlson and Ramona Pool.

Q. Do you have any other statements? [254]

A. I have a number of statements of individuals with reference to the offense for which the said Ray Sage and Gaither were prosecuted in the district court, with reference to burglary, but no statements with reference to the alleged brutality.

Q. I hand you defendants' Exhibit D in evidence and ask you to examine this exhibit and determine, from a search of your files, if you have a copy or an original of that statement?

A. I find no statement in any of the records that is identical with defendants' Exhibit D.

Q. I hand you, Mr. Dickerson, defendants' Exhibit C for identification, which purports to be official document of the North Las Vegas police department, and ask if, upon a search of the files and



(Testimony of George Dickerson.)

records in your custody and control, you have a copy similar to the same as that submitted to you?

A. I have no copy of duplicate of defendants' Exhibit C in the file with reference to the matter of Coite M. Gaither or Ray Lewis Sage, or in the file pertaining to the investigation of the recall, which was found in the exhibit given to Mr. Matteucci.

Mr. Babcock: I have nothing further.

Mr. Matteucci: I have no further questions.

(Witness excused.)

Mr. Matteucci: At this time, your Honor, I would like to submit, for the purpose of going into evidence, defendants' Exhibit C for identification. I believe, your Honor, that the [255] signature on there of Mr. Carlson has been identified by Mr. Carlson, he said it was his signature, and Mr. Dickerson has no record of any other copy being in his file. It is not an official document of the North Las Vegas police department.

The Court: It certainly purports from its face to be.

Mr. Matteucci: I appreciate that, but Mr. Dickerson did not have it in his file.

Mr. Babcock: We submit it is a fugitive from the files of the North Las Vegas police department and no foundation has been laid for its admission.

The Court: From the record as it stands now, it was never a part of the file, so we have a claimed statement on what purports to be an official form, but which counsel admits himself is not an official

form, not made in the regular course of business. Do you offer that as an official document?

Mr. Matteucci: No, your Honor, just for the purpose of what it purports to be.

The Court: The offer will be received in evidence as defendant Clifton's Exhibit C.

Mr. Matteucci: At this time defendant Clifton rests.

The Court: Does the government propose to offer any rebuttal?

Mr. Babcock: We have no rebuttal, your Honor. Government rests. [256]

State of Nevada,  
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had and the testimony adduced at the trial of the case entitled, United States of America, Plaintiff, vs. William Cecil Pool and Edward Ellis Clifton, Defendants, No. L. V. 136, held in Las Vegas, Nevada, on Monday, Tuesday and Wednesday, the 14th, 15th, and 16th of October, 1957, and that the foregoing pages, numbered 1 to 256, inclusive, comprise a true and correct transcript of my said shorthand notes, to the best of my knowledge and ability.

Dated at Carson City, Nevada, November 8, 1957.

/s/ MARIE D. McINTYRE,  
Official Court Reporter.

[Endorsed]: Filed November 18, 1957.

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[Title of District Court and Cause.]

### JURY TRIAL

October 17, 1957

Court convened at Las Vegas, Nevada, Thursday, October 17, 1957, in the above-entitled matter, counsel for the government and counsel for the respective defendants having rested at the close of court session on October 16, 1957. The following proceedings were had:

The Court: Let the record show the presence of respective defendants with their counsel and the presence of government counsel. Let the record show further that the court has been convened, without the presence of the jury or the alternate juror, at the hour of ten o'clock. Mr. Marshal, will you observe the courtroom and state to the Court whether or not there are any members of the jury present in the courtroom?

The Marshal: No, there are not.

The Court: Very well. After having wished counsel and those of you in the court good morning, the Court wishes to take this opportunity, outside

the presence of the jury, to make [1\*] this comment: The integrity of our courts is a matter of concern to every citizen, and it is especially the duty of judges to maintain the integrity of those courts. I point out to you that the administration of justice is not an exact science, but is a product of the respective conditions and all of the law. During the course of every trial incidents occur which surprise both the Court and counsel. The law provides in every instance the procedure to be followed. If it is thought by the Court or counsel that such incidents have interfered with or obstructed justice, the Court and counsel are ever solicitous of the rights of defendants in criminal matters.

Yesterday afternoon, after court had recessed, counsel for the government and counsel for the respective defendants came into chambers and advised this Court of an incident which had been reported to them. It appears that as one of the defense witnesses was about to enter the courtroom to testify, one of the government witnesses made some brief comment to that witness. At this informal discussion between Court and counsel had in chambers yesterday afternoon after recess, concerning such incident, and based upon the comment that was made, it was agreed by all of counsel that the incident was entirely harmless and that the testimony of the witness approached was in no way influenced thereby. On the basis of discussion of counsel at the conference in chambers, this Court was of the same opinion.

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**\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.**

This incident has been recorded in the local papers and [2] no doubt has been widely read by the community. To lay persons it may appear that some sinister motive is involved, that justice is somehow being warped, and the integrity of the court impeached. Let me point out that both the government and each of the defendants is represented by able counsel. They are here to serve the interests of their respective clients. They know the law and the legal procedure and are competent in every way to protect their respective clients. This may be, as they know, by presenting proper motion to this Court.

Now, having made this statement for the record, I ask counsel for the government if this Court has correctly reported the conference had and the matters discussed there.

Mr. Babcock: We believe the Court has, your Honor, and take no exception to your Honor's remarks.

The Court: Mr. Watson, representing the Defendant Pool, do you have any comment to make as to the Court's remarks?

Mr. Watson: The remarks of the Court, your Honor, are entirely correct, and Mr. Pool has no motion to make as a result of the incident.

The Court: Mr. Matteucci, on behalf of your client?

Mr. Matteucci: Your Honor, I concur in the remarks made by the Court and I think the Court has adequately covered the conference in your chambers yesterday, as to what took place at that



time and on behalf of the Defendant Clifton I have no motion at this time. [3]

The Court: Thank you, gentlemen. Mr. Marshal, will you now have the jurors called into the courtroom?

(Jury returned into court at 10:20 a.m.)

(Arguments and instructions to the jury.) [4]

State of Nevada,  
County of Clark—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had in the case entitled United States of America, Plaintiff, vs. William Cecil Pool and Edward Ellis Clifton, Defendants, No. 136, at the trial held in Las Vegas, Nevada, on the 14, 15, 16 and 17 of October, 1957, and that the foregoing pages, numbered 1 to 4, inclusive, comprise a true and correct transcript of my shorthand notes taken on October 17, 1957, at 10:00 o'clock a.m., in the absence of the jury, after all evidence had been concluded on October 16, 1957.

Dated at Las Vegas, Nevada, February 6, 1958.

/s/ MARIE D. MCINTYRE,  
Official Court Reporter.

[Title of District Court and Cause.]

DEFENDANT POOL'S MOTION FOR  
A NEW TRIAL

Monday, November 18, 1957

Be It Remembered that the above-entitled matter came on regularly for hearing before the Court at Las Vegas, Nevada, the Honorable John R. Ross presiding, on Monday, the 18th day of November, 1957, at the hour of 3:25 o'clock, p.m., the Government being represented by Franklin P. Rittenhouse, Esq., and Howard W. Babcock, Esq., and the Defendant Pool being present and being represented by Calvin C. Magleby, Esq., of Zenoff & Magleby, Esqs., and Morton Galane, Esq., and the following proceedings were had:

The Court: This is in the matter of the United States of America vs. William Cecil Pool and Edward Ellis Clifton, Criminal Number 136. The matter before the Court at this time is the Motion for a New Trial on the part of the Defendant William Cecil Pool. Let the record further show that on the 23rd day of October, 1957, M. G. Matteucci, attorney for the defendant [1\*]—strike that. Let the record show that there has been filed on November 18th Notice of Appearance of Morton Galane as attorney for the Defendant William Cecil Pool. You may proceed.

Mr. Galane: If the Court please, counsel for the government, I would like at this time, your Honor,

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

to address myself to the first ground contained in the Motion for New Trial, namely, that the verdict is not supported by the evidence. Before we turn our attention to the indictment——

The Court: Pardon the interruption, counsel, but for what it may be worth, in the interests of saving time just keep in mind that the Court is very, very familiar with what the evidence was.

Mr. Galane: I shall do so, your Honor. Before we turn to the indictment it would be helpful to examine what the record shows when we construe it most favorably to the Government with regard to the obtaining of the confessions. The Government said Gaither testified that after Chief Pool beat him he was taken to the North Las Vegas Police Department; that he sat at that Police Department about five and one-half hours, from three o'clock until eight o'clock; that he admitted to nothing and he told Chief Pool just that; that after five and one-half hours Chief Pool presented to him a sack full of change and some scraps of paper. Gaither contended that he read the papers and that he then said, "I will confess." Gaither [2] further added that, "I will only confess to the burglary of three markets in North Las Vegas," and although Chief Pool desired confessions as to other burglaries Gaither refused to confess to any more than three. In short, your Honor, the evidence shows that the Gaither confession was voluntarily given not as a result of force and violence but after the lapse of five and one-half hours upon the presentation to Gaither of incriminating evidence. If that confes-

sion had been offered in a trial prosecuting Gaither for burglary it would have been admissible as a voluntary confession. This much the record shows. Now, let's turn to the Government witness, Sage.

The Court: Tell me, at this point, what is the materiality of any confession on the part of Gaither to any crime with which we are not concerned here?

Mr. Galane: The materiality is this, your Honor, in answer to the Court's question. We take the position that the indictment, whose language has been interpreted by the United States Supreme Court, required the Government to prove that the defendant deprived Gaither of his Federal Constitutional rights by obtaining the confession by force and violence. If your Honor turns to the indictment, and that has been interpreted by the Courts of our land as having a fixed meaning, the indictment specifies the manner in which the Federal Constitutional right was invaded or infringed, and that is the crux of a civil rights case. This is what the Grand Jury stated, [3] "to wit \* \* \*"—they are now specifying the constitutional infringement—"\* \* \* the right and privilege to be secure in his person while in the custody of anyone acting under color of the laws of the State of Nevada, the right and privilege to be immune from force and violence by anyone exercising the authority of the State of Nevada or acting under color of its laws for the purpose of obtaining a confession, statement or information about an alleged offense." The Supreme Court of the United States has said that where this is the form of the indictment, in *Williams vs.*



United States, 341 U. S. 97, where this is the form of the indictment then the crux of the case, of the Government's case is that the defendant obtained a confession by force and violence depriving the prisoner of his immunity. Now that is the act. Accompanying that act, your Honor, must be a specific intent. The case of *Screws v. United States*, the Supreme Court ruling on Civil Rights Act says there must be a specific intent to deprive a defendant of that particular constitutional right. Keeping this interpretation in mind, may we turn to the testimony of the witness, Sage. Sage said that after his beating he was overnight in Henderson jail; that the next day he was brought back to North Las Vegas and that when Chief Pool presented him with the Gaither confession only at that time did Sage sign a confession. In short, the Gaither confession was voluntary, the Sage confession was voluntary, and when you construe this record as favorably as you [4] desire in favor of the Government the only inference to be drawn is that even if these men were beaten the beating did not bring about the giving of a confession. The confessions were voluntary. Now, we submit there is a variance between the proof and between the allegations in the indictment as to what act constituted the deprivation of the federal right under the Civil Rights law. This is a statute which requires two things. It requires an act and it requires that that act be performed with a specific intent to violate that federal statute. I will not say here today that the Government could not prosecute under the Civil Rights Act simply by



proving a beating. There can be circumstances where a beating would violate the Civil Rights Act and there can be circumstances where a beating can be executed as a disciplinary measure and would be strictly a matter within the jurisdiction of the states and not the federal government. However, this indictment charges the defendants who are being tried with obtaining a confession by force and violence. "We charge you with an act. That is, obtaining a confession by force and violence, and that you performed that act with a specific intent in mind, namely, to deprive the prisoner of his immunity not to have a confession beaten from him by force and violence." Now, if your Honor please, not every variance—not every variance is grounds for a new trial or acquittal. The Federal Rules of Criminal Procedure, in fact, state that a variance shall not be grounds for [5] reversal unless, as our United States Supreme Court has said, a defendant has been misled and prejudiced in the presentation of his defense. Therefore, we undertake the burden to demonstrate to this Court how the variance between the manner in which the confession was obtained and the manner described in the indictment prejudiced this defendant. We all agree that the Government must prove beyond a reasonable doubt the specific intent to deprive the prisoner of that constitutional right specified in the indictment. When the Government finished its case and merely proved a beating and didn't prove that the confession was obtained that way the defendant could have sat back and decided not to testify as to his

state of mind, and as to the commission of the act. The defendant, relying on the indictment that the specific intent they were going to prove was the intent to obtain a confession by force and violence accompanied by the act of obtaining that confession by force and violence, felt therefore there was no need to testify. If the defendant had been informed by an indictment that—if the defendant had been informed by an indictment, your Honor, that what he was being charged with was particularly with the act of summarily punishing a prisoner without a trial by jury that would have put the issue of specific intent in a different light. As I stated to the Court, it is one thing to say to a defendant the act you have performed is that you have beaten a prisoner with the intention of punishing him without a jury [6] trial, and stating you have obtained a confession by force and violence with the intention of obtaining that confession by force and violence. If this defendant had known from the indictment that what he was charged with was a beating, unrelated to obtaining a confession his decision as to testifying or the decision of his counsel might have been different. As the evidence stood the jury could have inferred that the beating was a disciplinary measure. Even if the jury believed that there was a beating by the defendant they would certainly consider a verdict of not guilty. The jury could have inferred that the beating was done maliciously. But the jury could never infer that the beating was the means by which the defendant obtained the con-

fession because Sage and Gaither said, "We would admit to nothing," and they would not give the confession until incriminating evidence was presented to them. Let me read to the Court, if I may, from 341 U. S. 97, *Williams vs. United States*:

"The indictment charged that petitioner deprived designated persons of rights and privileges secured to them by the Fourteenth Amendment. These deprivations were defined in the indictment to include illegal assault and battery. But the meaning of these rights in the context of the indictment was plain, namely, immunity from the use of force and violence to obtain a confession. Thus Count II of the indictment charges that the Fourteenth Amendment rights of one Purnell were violated in the following respects: The [7] right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune while in the custody of persons acting under the color of the laws of the State of Florida from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law \* \* \*"

and the Court goes on and concludes that the crux of this indictment was the charge that the act committed was obtaining the confession by force and violence. The Supreme Court even italicized the

words "immunity from the use of force and violence to obtain a confession." In the decision of *Jones v. United States*, Fifth Circuit, an indictment was dismissed because a District Court construed it as charging the prison official with a beating, and the District Court said if it was only a beating that he had it is a matter for state jurisdiction. We do not find an area in which the Federal Government can operate in this field. The case was appealed to the United States Court by the Government and the Supreme Court remanded to the Circuit Court of Appeals of the Fifth Circuit in order to interpret the indictment. The Fifth Circuit Court of Appeals said this, your Honor. "We don't interpret that indictment [8] like the District Court did. We say it means that the prison official obtained statements and confessions by force and violence, and when we construe it in that narrow manner we find that the government states a *prima facie* offense under the Civil Rights law." In short, the United States Supreme Court and the Fifth Circuit Court of Appeals have taken the identical language that the Grand Jury selected and given it legal meaning, and the meaning is that the act which deprives the person of his federal rights under the Civil Rights law is obtaining the confession by force and violence and the specific intent to obtain a confession by force and violence. We further submit to the Court that if we construe the Government's evidence as favorably as we can to support the conviction, they can show a beating, they can show that the beating may have stemmed from a desire to get a statement or a



confession, but they can not prove that the statement or confession was obtained by force and violence and that is the act which they charge in the indictment. We further submit to your Honor that there is prejudice to this defendant. There is prejudice to this defendant. If this indictment had merely said that this defendant had beaten the prisoner with the intent of trying him by ordeal, which is what the U. S. Attorney in summation and the Court in its instructions refer to, the decision of his counsel as to his testifying on his state of mind and as to whether or not he committed the act might have been different, because [9] the Government would not have to make as strong a burden of proof. But when this defendant read the indictment which charged him with the act of obtaining a confession by force and violence and he heard the evidence of Sage and Gaither that the confessions were voluntary without a beating he could only be called upon to meet the standard of proof set forth in that indictment, and that standard was so severe, because the Grand Jury had charged him with getting the confession by violence that his counsel may have made the decision that there was no need for him to testify. We have shown a prejudicial variance between the record construed favorably by the Government to support a conviction and the indictment construed by the Supreme Court of the United States. It was settled.

Now, let us turn, if your Honor please, to the trial itself. Toward the end of the trial the District Attorney of Clark County, George Dickerson, testi-



fied. Mr. Babcock asked him this question, he said "Mr. Dickerson, when you said on direct testimony that you participated in the Grand Jury investigation of Pool what did you mean?" We submit there was nothing wrong with that question, asking him on cross-examination, "what did you mean by participating?" is not objectionable. It is not an objectionable question, and Mr. Dickerson answered, he said, "I was not in the Grand Jury room." He said, "I gave advice to the Grand Jury and when the Grand Jury finished I talked to them," and then the record shows that on his own [10] volition the Clark County District Attorney said, "I advised the Grand Jury that at the most Pool had committed a misdemeanor offense and that since the Grand Jury is an arm of the District Court and the District Court does not try misdemeanor offenses the Grand Jury should not indict." Mr. Watson moved to strike the legal opinion of Mr. Dickerson and his motion was denied, the ground given was that he could have anticipated the admissible nature of Mr. Dickerson's answer. We state, your Honor, that no one could have anticipated that when Mr. Dickerson was asked "what did you mean by participating" he would express to this jury an opinion that Chief Pool committed an offense under the laws of the State of Nevada. Can this Court imagine anything so prejudicial as to permit a man having the prestige of the Clark County District Attorney to state to the jury that he had advised his Clark County Grand Jury not to indict because at most he had committed a misdemeanor offense. I

have a transcript of the record. That was the question and that was the answer, and it was severely prejudicial in a case where all the Government could offer were two convicted felons whose testimony the jury could have discarded under the law, and one person who admitted signing an inconsistent statement and whose testimony the jury could have discarded. Not one witness in this case appeared whose testimony could not have been ignored by that jury for sound legal reasons. All three were impeached. Two were impeached by felony convictions [11] and one was impeached by an inconsistent statement which he tried to explain away. Therefore, imagine the tremendous power of the Clark County District Attorney stating in front of this federal jury, "I advised my Grand Jury that at most he had committed a misdemeanor offense and that therefore there should be no indictment." Now, if your Honor please, I would like to point the Court's attention, if the Court will indulge me another minute, to this. The defendant offered Exhibit C which was a statement signed by the Witness Carlson, which on its face impeached the testimony of that witness. The Court at that time accepted the objection of the U. S. Attorney that since the statement bore the heading "North Las Vegas Police" it was some official document which could not be admitted at that time. We submit that since Witness Carlson stated that was the original instrument which he signed it is immaterial what notation it bore at its head, and the Court must

have reached a similar conclusion because at the close of the trial the Court admitted the document. Now, this was a critical document. Sage and Gaither were convicted felons. Carlson was the only one testifying having weight and Carlson tried to explain he signed an inconsistent statement because Chief Pool told him the Grand Jury of Clark County was investigating the matter. This document, Exhibit C, was signed by Carlson, he later admitted, five days before the Clark County Grand Jury investigated the matter. Carlson signed this [12] statement before the Clark County Grand Jury investigated the matter. If the Court had admitted the statement and Chief Pool's counsel had been able to read that statement to the jury while Carlson was on the witness stand being cross-examined and while his demeanor was under observation of the jury imagine the difference between the introduction of the document at that time and the introduction of the document at the last account of the trial. The jury must have made its mind up long before that document was admitted. Carlson in his testimony attempted to throw a smoke screen about these documents by saying that Chief Pool pressured him in the light of the Grand Jury investigation. This document he signed before the Grand Jury of Clark County heard of the matter and investigation was deferred until the end of the case. I believe that the defense of Chief Pool was seriously impaired by being deprived of the opportunity to read to that jury

the inconsistent statement when Carlson was on that witness stand, and that the prejudice resulting to the defendant was not overcome by a ruling admitting that same document at the close of the case. There was no reason to keep that document out and it was critical because as I stated, Sage and Gaither were convicted felons, were sent to prison by Chief Pool and this jury could certainly have taken that into account when they considered that testimony, but Carlson was a police officer and any discretion which the Court could have exercised to enable an attorney for Chief Pool to [13] discredit Carlson with the proper document should have been exercised in favor of the defendant at that time. Now, I would like to take up with the Court, and I appreciate the Court giving me this opportunity to present these arguments, the jury instructions. At the outset counsel for the defendant did not object to the jury instructions. The general rule is that a failure to object deprives the defendant of the right later to challenge the instructions. However, in *Screws vs. the United States*, the decision which interpreted the Civil Rights Act, in that case the defendant did not object to the jury instructions and the Supreme Court said that where an omission goes to the essential ingredients, these are the words of the Supreme Court, "where the omission goes to the essential ingredients of the offense alleged in the indictment the instructions are open to challenge despite a failure of defense counsel to object." On page 4 of



the instructions to the jury, your Honor, the Court stated this: "Defendant Pool is on trial for depriving Sage and Gaither of certain rights, privileges and immunities secured and protected to them by the Constitution of the United States, and Defendant Clifton is on trial for depriving Sage of certain rights, privileges and immunities secured and protected to him by the Constitution of the United States. The Fourteenth Amendment to the Constitution provides that no state shall deprive any person of life, liberty or property without due process of law nor deny to any person [14] "within its jurisdiction the equal protection of the law." At the outset of the instructions the Court did not inject the idea that the Government must prove specific intent. The Court said that Defendant Pool is on trial for depriving \* \* \* and that is all. Next, and I will admit that later in the instructions the Court did instruct on specific intent, but I will come to that in a moment. Later in these instructions, your Honor, the Court said, "The Court charges you that Sage and Gaither had the right to be tried upon any charge for which they had been arrested, in a regularly constituted court of justice having jurisdiction and if found guilty subjected to the usual pain and penalties applicable to all persons alike for the offense charged, but not to be subjected to unusual punishment or to be tried by ordeal. These were constitutional rights. We submit that that instruction amends the indictment. The instruction did not say to the jury, "you are



charged that if you found Defendant Pool obtained a confession by force and violence you would find him guilty." The instruction took, if your Honor please, the Civil Rights Act, in which half of the statute talks about discriminating against a person on grounds of being an alien or on grounds of his race and color, and says it is a crime to subject a person to unusual pains or penalties on account of race, color or on account of being an alien.

That was injected into the instruction and the instruction did not charge the jury with the critical element, [15] and that is, obtaining a confession by force and violence. On the next instruction the Court was careful. However, the Court did not relate the specific intent to the obtaining of the confession by force and violence. The Court said this, "It is necessary for the jury to find that the defendants had in mind the specific purpose of depriving Sage of a constitutional right, that is to deprive him of the right to be tried by a court, to be tried in an orderly way, and to receive, if found guilty, the usual pains and punishment for any offense whenever committed." And to convict Pool, under Count II, "it is necessary for the jury to find that the defendant had in mind the specific purpose of depriving Gaither of a constitutional right, that is, to deprive him of a right to be tried by a court, to be tried in an orderly way, and to receive, if found guilty, the usual pains and punishment for any offense whenever committed." And then the Court went on to add, "when they so act, they at least act in

reckless disregard of constitutional prohibitions or guarantees.” Now, firstly, the instruction nowhere talks about obtaining a confession by force and violence. Nowhere in these instructions is there conformity to the crux of the indictment; and, secondly, a recent ruling of this Circuit in *Forster v. United States*, a tax fraud case, held that it is reversible error if in the instructions on wilfully the Court injects the idea that a reckless disregard of the law compels a finding of guilty. In *Forster v. United States* [16] this Circuit unanimously held that when a jury is instructed as to the meaning of the word “wilful intent” under the tax fraud statutes, and by analogy under this statute, then that instruction can not be diluted by an implication that a reckless disregard of the law permits a finding of specific intent. That is not the law in other circuits. It is, however, the law in the Ninth Circuit. We submit that the jury did not get a clear picture of two things, first, that the act for which the Defendant Pool was charged was obtaining a confession by violence, and two, that the specific intent must be to obtain the confession by violence, and finally that that must be wilful intent, conduct with an evil purpose, and the jury should not be permitted to infer that reckless conduct is wilful conduct. Our Court of Appeals said that even a reckless disregard of the Internal Revenue regulations is not enough as long as a man makes out a defense that he relied on his accountants, and that his action was not wilful. The instruction was diluted. Now, even in the

close of the instructions, if your Honor please, the Court said this. "As to Count I, let me summarize the questions you have to determine. 1. Did Defendants Pool and Clifton take Sage into custody under color of law? 2. Did the Defendants Pool and Clifton specifically intend to deprive Sage of a constitutional right guaranteed to him by the United States Constitution? 3. Has the Government established these two foregoing essentials to your satisfaction [17] beyond a reasonable doubt?" Where is the jury informed that they must determine that the Defendant Pool committed an act depriving the prisoners of the constitutional rights specified in the indictment? It is not in there. The final summary instruction is proper as to the question of acting under color of law, is proper as to asking the jury to rule on the question of intent, is proper on compelling the jury to find to its satisfaction beyond a reasonable doubt, and omits any reference to obtaining a confession by violence, and to omit it is a critical point. To say that the jury is not bound by the Government's obligation to prove beyond a reasonable doubt that the act charged in the indictment, namely, obtaining a confession by force and violence, was the act committed by the defendant. It was not in the Government's proof and it was not contained in any of the instructions, and particularly misleading was its absence from the final summary instruction.

There is one other matter, before I close, which I would like to draw to your Honor's attention without taking too much time. It is simply this. That

the thought seriously exists in my mind whether the testimony of Mr. Pool's former wife, Ramona Wolf, whether his statements to her was not a confidential communication. In *Blau v. United States*, the Supreme Court said that there is a presumption that a communication to a wife is confidential. Now, generally that presumption is overcome by the presence of a third person. We make [18] this interesting observation in this case for the Court. Since the Government charged Pool with a specific intent to violate the law, the inference to be drawn is that Chief Pool, knowing he was violating the law, would not have permitted her to overhear that unless she was his wife. The Government, assuming that since she worked for the City of North Las Vegas it was not a confidential communication makes an unreasonable inference. They are charging him with a violation of law and in Court they are saying he is doing things in front of a woman not because she is his wife but because she is secretary of a Police Department. It is inconsistent. In this motion for a new trial affidavits have been filed related to the question of bias and prejudice. Your Honor has had an opportunity to examine those affidavits and I will not take the time of the Court to argue the effect of those affidavits because the record speaks for itself. I urge upon the Court, however, that this initial argument, that this indictment has been construed by our Courts that Chief Pool was charged with extorting a confes-



sion by force and violence, with specific intent to do so; that the Government has specified too much in the indictment, and I am not saying that language might not have been sufficient—I am saying they have specified more than they could prove because the proof shows that the statements were given voluntarily and that because of the nature of the issue of specific intent, the failure of this defendant to take the witness [19] stand to testify as to the act committed and as to his state of mind reveals the prejudice to this defendant stemming from the variance between the indictment and the proof. That is a serious error. It would mislead any defendant who had to weight whether to testify as to his state of mind. To say you committed one act in an indictment and to prove another act or a lesser act, namely, just a beating without getting a confession as a result of that beating is to put a different burden of proof on the issue of specific intent, and I believe that it is obvious that it was misleading to the defendant, and in this case it is vital to sustain the conviction. Thank you.

The Court: Are there any remarks or argument by the Government in connection with this Motion?

Mr. Babcock: We would submit without argument, if the Court please.

The Court: In this matter on the motion of the Defendant William Cecil Pool for a New Trial it is ordered that the Motion be and the same is hereby denied.

Mr. Galane: If your Honor Please, if I may



have the attention of the Court for a moment, we have prepared a Notice of Appeal together with a Petition for Bail pending Appeal with affidavits attached to that Petition relating to the issue of bail, and Points and Authorities in support of bail pending appeal. If the Court would permit me I would like to submit these documents to the attention of the Court for consideration [20] of the Court at this time.

The Court: You may.

Mr. Galane: And I have a copy for the U. S. Attorney.

The Court: Do you wish to be heard on the Petition on the part of the Government?

Mr. Rittenhouse: Your Honor, insofar as the defendant's entitlement to bail pending appeal I don't think there is any serious question but that the Court does have discretion to fix bail. I should like to inquire as to what the present bail is.

The U. S. Marshal: I think it is Twenty-Five Hundred Dollars.

Mr. Rittenhouse: In the event it is Twenty-Five Hundred Dollars, your Honor, we would move that bail be fixed in the sum of Five Thousand Dollars.

The Court: In connection with the defendant's Petition for Bail pending Appeal it is the Order of the Court that the defendant be and he is hereby committed to the custody of the Marshal, subject, however, to being admitted to bail on the filing of a proper bond in the amount of Five Thousand Dollars.

Mr. Rittenhouse: Is defendant ordered remanded?

The Court: Until such time as the bail is deposited. Gentlemen, we have disposed of the immediate matters before the Court, the Motion for a New Trial on the part of the Defendant Pool and the matter of his bail. Once before in this [21] case the Court had occasion to refer to the integrity of the Court. There are two unusual sets of affidavits filed in this matter, one on behalf of the defendant, the other set on behalf of the Government. The statements made in each of the opposing sets of affidavits can not be true. If the statements in one set of the sworn affidavits are true the statements to the contrary in the opposing set of affidavits must be false. The Court recommends to the proper government officials that there be pursuant to statute and law applicable to such situations, a full and complete investigation to the end that if there be perjury or false swearing on the part of any of these affidavits that the matters be referred to the Grand Jury and thereafter the Court and the U. S. Attorney's office follow any recommendations that may be made by the Grand Jury. Now this Court is having its first experience, when I say "first experience" I mean during the last several months, as a Judge of this Court in Clark County. It may be that the Court's mistaken, but the Court has the feeling that there are some things that may be characterized as rather out of the ordinary occurring under this southern sun insofar as Court matters are con-

cerned. As an individual I am fully apprised and aware of the local situation insofar as, shall I say, rivalry between the newspapers. Whatever the situation may be, having in mind the freedom of the press on the one hand and the integrity of the Court on the other, there should not be conduct [22] on the part of newspapers or individuals which can ultimately tend to the obstruction of the course of justice. I propose on every occasion that it comes to my attention to direct that full and proper action be taken against every man and woman within my district who has sworn falsely or who has committed perjury. I propose that the Court, on every newspaper, whether it be in the north or the south of this district that, by its acts and publications tends to obstruct justice as the law of this land says it shall be meted out, shall take action. We are all intelligent people. We know the bounds and the limits to which we may go. We know when we are beyond those bounds. As was said by a rather famous speaker before the State Bar only two days ago, "a judge cannot protect himself." The Court must read and hear whatever criticism is made. The only way that the processes of the law can be preserved is to take proper legal action against all persons who have exceeded the bounds of propriety. This is the first time I have had occasion to make such a statement. I hope I never have to make it again. We will be in recess.

(Whereupon Court recessed at the hour of 4:30 o'clock, p.m., Monday, November 18th, 1957.)

I Hereby Certify That the foregoing pages, numbered 1 to 23, inclusive, comprise a true and accurate transcript of my shorthand notes taken at the proceedings in the foregoing matter. Dated at Las Vegas, Nevada, this 3rd day of December, 1957.

/s/ STELLA BUTTERFIELD,  
Official Court Reporter.

[Endorsed]: Filed December 5, 1957. [23]

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[Title of District Court and Cause.]

DOCKET ENTRIES OF THE PROCEEDINGS  
IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF NE-  
VADA

1956

- Oct. 5—Filing Indictment.
- Oct. 5—Filing Sealed Record of Concurring Grand Jurors.
- Oct. 5—Entg. Order Warrants Issue Bond: \$2,500 each.
- Oct. 5—Issuing Warrants for Arrest of Deft's (Orig. & one copy each handed Marshal).
- Oct. 9—Filing Appearance Bond for Deft. Wm. C. Pool, in the sum of \$2,500.00, with Mrs. Kenneth Huff and Dorothy Porter Pool as sureties thereon.

1956

- Oct. 12—Filing Warrant for Arrest. Entg. Return. Arrested Deft. at 2414 North Main St., No. Las Vegas, Nev., on 10/8/56.
- Oct. 19—Filing Commissioner's Waiver of Removal Hearing.
- Oct. 19—Filing Warrant of Arrest. Entg. Return. Received the within Warrant the 10th day of Oct., 1956, and executed same.
- Nov. 1—Filing Court Appearance Bond for Deft. Edward E. Clifton in sum of \$2,500 with Carolina Casualty Ins. Co., as sureties thereon with Commissioner's Final Commitment and Record of Proceedings attached.
- Nov. 19—Entg. Order that Carlos G. Watson is associated with Zenoff, Magleby and Manzonie for the purpose of this case to represent Deft. Wm. C. Pool.
- Nov. 19—Defendants present on bond. Carlos G. Watson representing Wm. C. Pool. No atty. for Deft. Edward E. Clifton. Copy of Indictment handed Deft. Wm. C. Pool. Arraigned. Plea: Count I: Not Guilty. Count II: Not Guilty. Entg. Order that time for arraignment of the Deft. Edward E. Clifton is continued to Wednesday, November 21, 1956, at 10:00 a.m. at which time a trial date for Deft. Wm. C. Pool will be set. Defendants released on present bond.



1956

Nov. 21—Defts. present on Bond. Deft. Wm. C. Pool with Atty. Carlos G. Watson. Deft. Edward Ellis Clifton with Atty. Gene Matteucci. Copy of Indictment handed Deft. Clifton. Arraignment Plea as to Deft. Clifton: Count I: Not Guilty. Ordered that this case be set for Jury Trial on March 27, 1957, at 10:00 a.m. Defts. released on present Bond.

1957

- Jan. 15—Filing Subpoena. Entg. Return. Served Coite M. Gaither at Nevada State Prison, Carson City, Nev., on Jan. 14, 1957.
- Jan. 15—Filing Subpoena. Entg. Return. Served Ray L. Sage, Jr., at Nevada State Prison, Carson City, Nev., on Jan. 14, 1957.
- Jan. 16—Filing Reporter's Transcript of Proceedings of Nov. 21, 1956, as to Deft. Clifton. Arraignment.
- Jan. 16—Filing Reporter's Transcript of Proceedings of Nov. 19, 1956, as to Deft. Pool. Arraignment.
- Feb. 28—Entg. Order vacating the setting of March 27, 1957, for trial and placing same on Judge Ross' Criminal Trial Calendar for setting. (Counsel notified.)
- Apr. 18—Entg. Order setting this case for Trial with a Jury on Oct. 14, 15, 16, 17 and 18, 1957, at 10:00 a.m.
- Apr. 19—Counsel notified.

1957

- Sept.17—Filing Subpoena to Testify. Entg. Return. Served W. D. Richard at Fire Station, Henderson, Nevada, on September 13, 1957.
- Sept.17—Filing Subpoena to Produce Document or Object. Entg. Return. Served Viola Trick at Rose De Lima Hospital, Henderson, Nevada, on September 13, 1957.
- Sept.17—Filing Subpoena to Produce Document or Object. Entg. Return. Served William Witte at Clark County Sheriff's Office, Las Vegas, Nevada, on September 13, 1957.
- Sept.17—Filing Subpoena to Produce Document or Object. Entg. Return. Served George Crisler at Henderson Police Dept., Henderson, Nevada, on September 13, 1957.
- Sept.17—Filing Subpoena to Produce Document or Object. Entg. Return. Served Dr. J. H. Coogan at Rose De Lima Hospital, Henderson, Nevada, on September 13, 1957.
- Sept.17—Filing Subpoena to Produce Document or Object. Entg. Return. Served Dr. James B. French at 1100 Arizona St., Boulder City, Nevada, on September 13, 1957.
- Sept.24—Filing Subpoena to Testify. Entg. Return. Served Coite Martin Gaither, Jr., at U. S. Marshal's Office, Las Vegas, on September 17, 1957.
- Sept.24—Filing Subpoena to Testify. Entg. Return. Served Vic Carlson at 10th and Fremont

1957

- Streets, Las Vegas, Nev., on Sept. 17, 1957.
- Sept. 27—Filing Subpoena to Testify. Entg. Non-est. Return. Unable to locate Ray Lewis Sage, Jr., at Dundalk, Md.
- Oct. 4—Filing Subpoena. Entg. Return. Served Ramona M. Wolf at Detroit Lakes, Minnesota on September 25, 1957.
- Oct. 5—Filing Subpoena to Testify. Entg. Return. Served Ray Lewis Sage, Jr., near Slaty Fork, W. Va., on September 21, 1957.
- Oct. 8—Filing Trial Memorandum on behalf of Deft. Wm. C. Pool. (Watson.)
- Oct. 8—Filing Trial Memorandum on behalf of Deft. Edward E. Clifton. (Matteucci.)
- Oct. 10—Filing Trial Memorandum on behalf of Plaintiff. (Babcock.)
- Oct. 10—Filing Subpoena to Testify. Entg. Return. Served Al Ferguson at 2000 S. Fifth Street, Las Vegas, Nevada, on Oct. 7, 1957.
- Oct. 14—Filing Subpoena to Testify. Entg. Return. Served George Dickerson at Clark Co. Courthouse, Las Vegas, Nevada, on Oct. 7, 1957.
- Oct. 14—Trial with a jury. Ordered that Pltf's Exhibits Nos. 1 through 4 be replaced with photostatic copies in lieu of the original exhibits now on file.
- Oct. 15—Filing Subpoena to Produce. Entg. Return. Served Robert M. Nelson at 2101

1957

- Cartiar St., No. Las Vegas, Nev., on Oct. 12, 1957.
- Oct. 15—Filing Subpoena to Produce. Entg. Return. Served Clarke Davison at E & T Drug Store, No. Las Vegas, Nev., on Oct. 12, 1957.
- Oct. 15—Further trial.
- Oct. 16—Further trial. Plaintiff Rests. Ordered Deft's Motion of Acquittal of Count I of the Indictment as to Deft. Edward E. Clifton is denied. Ordered Deft's Motion of Acquittal of Counts I and II of the Indictment as to Deft. William Cecil Pool is denied. Defendant Rests as to Deft. William C. Pool. Defendant Rests as to Deft. Edward E. Clifton.
- Oct. 17—Further trial.
- Oct. 17—Filing Verdict of the Jury as to Deft. William Cecil Pool. Verdict: We, the Jury in the above-entitled case, find the Deft. William Cecil Pool guilty as charged in the first count of the Indictment; and guilty as charged in the second count of the Indictment.
- Oct. 17—Filing Verdict of the Jury as to Deft. Edward Ellis Clifton. Verdict: We, the Jury in the above-entitled case, find the defendant, Edward Ellis Clifton, guilty as charged in Count I of the Indictment.
- Oct. 17—Entg. Order that time for imposition of sentence is continued to Friday, Novem-

1957

ber 1, 1957, at 10:00 a.m. Further Ordered that bail heretofore fixed in the sum of \$2,500.00 for each of the defendants is approved and continued.

- Oct. 17—Filing Instructions given by the Court.
- Oct. 18—Filing Comments made Outside the Presence of the Jury—October 17, 1957.
- Oct. 22—Filing Order Extending Time. Ordered, that the defendants above named, and each of them, are hereby granted to and including the 29th day of October, 1957, in which to make their motions for a new trial, and the five-day period specified in the last sentence of said Rule 33 is extended to said 29th day of October, 1957.
- Oct. 23—Filing Withdrawal of Attorney M. Gene Matteucci as Attorney for Deft. Edward Ellis Clifton.
- Oct. 23—Filing Subpoena Duces Tecum. Entg. Return. Served George Dickerson at U. S. Marshal's Office, Las Vegas, Nevada, on October 16, 1957.
- Oct. 23—Filing Subpoena Duces Tecum. Entg. Return. Served Clarke Davison at U. S. Marshal Office, Las Vegas, Nevada, on October 16, 1957.
- Oct. 24—Counsel notified and copies of Order Extending Time mailed.
- Oct. 29—Filing Motion for New Trial on behalf of Deft. William Cecil Pool with Affidavit of Herman M. Greenspun, Donald I. Mil-



1957

ler and Margaret Simpson attached thereto.

Oct. 30—Entg. Order setting hearing on Motion for New Trial on November 18, 1957, at 3:30 p.m.

Oct. 31—Counsel notified and Notice to Counsel mailed.

Nov. 1—Deft's are present on Bond. Samuel S. Lionel associated with Jerome Weber appearing for Deft. Clifton. Upon Motion of Mr. Lionel, It Is Ordered that Jerome Weber is admitted to practice in this Court for the purpose of this case. It Is Further Ordered that Gene Matteucci at this time is permitted to withdraw as Attorney on behalf of Deft. Clifton. Time for sentence. Mr. Magleby moves the Court to continue the time for imposition of sentence pending the hearing on Motion for a new trial to be heard on November 18, 1957. It Is Ordered that Motion for Continuance be, and the same hereby is, Denied. Sentence as to Deft. Pool: Judgment: Ordered Deft. is hereby committed to the custody of the Attorney General for a period of **One (1) Year on Count I and One (1) Year on Count II**. Ordered that the sentence imposed on Count II is to run concurrently with the sentence imposed on Count I. Further Ordered that Bond heretofore fixed in the sum of

1957

\$2,500.00, be, and the same is hereby, approved and continued. Sentence as to Deft. Clifton. Judgment: Ordered Deft. is hereby committed to the custody of the Attorney General for a period of Six (6) Months. Mr. Weber moves the Court for additional time in which to file a Motion for a new trial. It Is Ordered that Motion for additional time, be, and the same hereby is, denied. Further Ordered that Bond of Deft. Clifton is exonerated. Deft. Remanded.

Nov. 1—Issuing Judgment and Commitment as to Deft. Pool. (Original and one handed Marshal.)

Nov. 1—Issuing Judgment and Commitment as to Deft. Clifton. (Original and one handed Marshal.)

Nov. 14—Filing Points and Authorities in support of Deft's Pool Motion for New Trial. (Z. & M.)

Nov. 18—Filing Affidavits of Charles L. Martin, William R. Henderson, Ramona Wolf and Victor L. Carlson in Opposition to Defendant William Cecil Pool's Motion for New Trial. (Rittenhouse.)

Nov. 18—Hearing on Motion for New Trial on behalf of Deft. Wm. C. Pool. The Court ruled that the motion is denied. Ordered that Bail Pending Appeal be fixed in the sum of \$5,000.00. Deft. remanded subject

1957

to the filing of a proper bond in the sum of \$5,000. Further Ordered that the original bond filed October 9, 1956, in the sum of \$2,500.00, is exonerated.

Nov. 18—Filing Notice of Appeal. (Galane.)

Nov. 18—Filing Petition for Bail Pending Appeal, with Affidavit of Paul Mathis and Dorothy Pool attached thereto. (Galane.)

Nov. 18—Filing Points and Authorities in Support of Petition for Bail Pending Appeal. (Galane.)

Nov. 18—Filing Notice of Appearance of Morton Galane.

Nov. 18—Filing Bail Bond Pending Appeal, in the sum of \$5,000.00, with Dorothy Greco Porter Pool and Roxie Huff as sureties thereon.

Nov. 18—Filing Reporter's Transcript. (Jury Trial, Oct. 14, 15, 16, 1957.)

Nov. 18—Filing Reporter's Transcript Re: Remarks of Court.

Nov. 26—Filing Reporter's Transcript Re: Sentence.

Dec. 2—Filing Judgment and Commitment as to Deft. Clifton. Entg. Return. Delivered Deft. to Federal Correctional Institution at Terminal Island, California, on November 21, 1957.

Dec. 3—Filing Ruling on Motion of William Cecil Pool for a New Trial. Entered Order that

1957

the Motion of the Deft. William Cecil Pool for a New Trial is denied.

Dec. 3—Counsel notified.

Dec. 5—Filing Reporter's Transcript of Deft's Pool Motion for New Trial.

Dec. 12—Filing the Appellant William Cecil Pool's Designation of Record on Appeal.

Dec. 13—Copy of Notice of Appeal mailed to U. S. Attorney.

Dec. 13—Copy of Notice of Appeal and Statement of Docket Entries mailed this day to Clerk, U. S. Court of Appeals.

Dec. 18—Filing Counter Designation of Record. (Rittenhouse.)

Dec. 20—Filing Order Extending Time to File and Docket Record on Appeal. Order: Time to file and docket record on appeal is extended to and including Jan. 20, 1958.

Dec. 23—Counsel Notified. (Copies Mailed.)

Dec. 23—Copy mailed to Paul P. O'Brien.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, Oliver F. Pratt, Clerk of the United States District Court for the District of Nevada, do hereby certify that the accompanying documents, listed in the attached index, are true and correct copies of the originals on file in this office, or true and cor-

rect copies of orders entered in the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal as designated by the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 8th day of January, A.D. 1958.

[Seal]                      OLIVER F. PRATT,  
Clerk;

By /s/ KAY MONA SMITH,  
Deputy Clerk.

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[Endorsed]: No. 15865. United States Court of Appeals for the Ninth Circuit. William Cecil Pool, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed January 14, 1958.

Docketed January 24, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



United States Court of Appeals  
for the Ninth Circuit

No. 15865

WILLIAM CECIL POOL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS  
ON APPEAL

Pursuant to Rule 17(6) of this Court, appellant submits the following statement on the points on which he intends to rely:

1. The Court erred in refusing to grant the defendant Pool's motion for a new trial which motion was based upon the failure of the evidence to support the verdict, in that, arguendo, assuming the evidence is construed favorably to the plaintiff it shows that (a) in the case of prisoner Gaither after his alleged beating he denied any knowledge of a crime, thereafter for about five and one-half hours he admitted nothing while in jail, thereafter he was shown a sack full of change and pieces of paper which he read, then he offered to confess to certain burglaries and not to any other burglaries, and (b) in the case of prisoner Sage after his alleged beating he admitted nothing, thereafter he was in jail

overnight and admitted nothing, and on the next day after he was shown the confession of prisoner Gaither he offered to confess to the same burglaries as Gaither did, and the indictment required the plaintiff to prove beyond a reasonable doubt that the deprivation of a Federal constitutional right which defendant Pool committed was obtaining from each prisoner a confession, statement or information by force and violence with the specific intent to deprive each of the said prisoners of the specified Federal constitutional right.

2. The Court erred in refusing to grant the defendant Pool's motion for a new trial which motion was based upon a material variance between the evidence and the indictment, in that, assuming *arguendo* the evidence is construed favorably to the plaintiff it shows that (a) in the case of prisoner Gaither after his alleged beating he denied any knowledge of a crime, thereafter for about five and one-half hours he admitted nothing while in jail, thereafter he was shown a sack full of change and pieces of paper which he read, then he offered to confess to certain burglaries and not to any other burglaries, and (b) in the case of prisoner Sage after his alleged beating he admitted nothing, thereafter he was in jail overnight and admitted nothing, and on the next day after he was shown the confession of prisoner Gaither he offered to confess to the same burglaries as Gaither did, and the indictment included as one of the elements of the offense that defendant Pool had deprived each of the prisoners

of a Federal constitutional right by obtaining a confession, statement or information by force and violence with the specific intent to deprive each of the said prisoners of the specified constitutional right, and that the said variance was prejudicial to defendant Pool in that it caused him not to testify in his own behalf either as to the alleged act or his state of mind.

3. The Court erred in refusing to grant the motion of defendant Pool to strike certain evidence and in refusing to instruct the jury to ignore such evidence, which motion was timely during the testimony of witness George Dickerson, District Attorney of Clark County, Nevada, who testified as follows:

“Q. Mr. Dickerson, I believe you testified this morning that you had participated in part in the matter of presentation of this matter to the Clark County grand jury. What did you mean when you said in part?

“A. I was not present during any time when the evidence was submitted. I was present outside after the conclusion of the matter. Questions as to the legal problems involved, as to what crimes, if any, could be determined by the grand jury were asked of me, at which time I informed the grand jury that it was without jurisdiction to entertain any action in this regard, in that the evidence adduced constituted at the most a misdemeanor offense; that the grand jury is an arm of the district court and can

return an indictment only on matters tried with the district court.

“Mr. Watson: I think Mr. Dickerson’s legal opinion in the matter of the State law of Nevada in the matter of the grand jury is not proper at all, as being prejudicial and should be stricken.

“The Court: Let me make this very obvious observation. Counsel are not permitted to sit idly by and allow inadmissible matter to go into the record and thereafter gamble on the chance of it being favorable or unfavorable and moving to strike. They are required to make objections to questions asked. Now this Court was aware of it as soon as that question was asked, but you didn’t see fit to make the objection.

“Objection overruled.”

4. The Court erred in refusing to grant defendant Pool’s motion for a new trial, which was based in part on the Court’s refusal to strike the evidence set forth hereinabove in paragraph 3.

5. The Court erred in excluding from evidence during the cross-examination of witness Victor L. Carlson defendant Pool’s Exhibit C, which was offered by defendant Pool during the cross-examination of witness Victor L. Carlson for the purpose of impeachment, said Exhibit C comprising an inconsistent statement identified as having been signed by witness Victor L. Carlson.

6. The Court erred in refusing to grant defendant Pool’s motion for a new trial, which based in

part on the Court excluding the evidence set forth hereinabove in paragraph 5.

7. The Court erred in admitting into evidence over the objection of defendant Pool to testimony of witness Ramona Wolf and in overruling said objection, since the testimony related to the interrogation of prisoner Gaither by defendant Pool in front of witness Ramona Wolf, and the objection made was that witness Ramona Wolf was the wife of defendant Pool at the time of the said occurrence, that the communications were made to her in confidence as the wife of defendant Pool, and that such confidential communications could not be disclosed over the objection of defendant Pool.

8. The Court erred in refusing to grant defendant Pool's motion for a new trial, which was based in part on the Court admitting into evidence the testimony of witness Ramona Wolf set forth hereinabove in paragraph 7.

9. The Court erred in instructing the jury in that the instructions as a whole failed to state that the charges against defendant Pool was the obtaining from a prisoner a confession, statement or information by force and violence with the specific intent to deprive the prisoner of that specified Federal constitutional right and therefore the Court omitted an essential ingredient of the offense charged.

10. The Court erred in refusing to grant defendant Pool's motion for a new trial, which was based



in part upon the omission from the instructions referred to hereinabove in paragraph 9.

11. The Court erred in instructing the jury in the following manner:

If you find from the evidence in this case that the defendants took Sage and Gaither into custody under color of law by reason of the positions they held, then the court charges you that Sage and Gaither had the right to be tried upon any charge for which they have been arrested, in a regularly constituted court of justice having jurisdiction and if found guilty subjected to the usual pain and penalties applicable to all persons alike for the offense charged, but not to be subjected to unusual punishment or to be tried by ordeal by the defendants. Those were their constitutional rights and privileges under the Federal Constitution.

12. The Court erred in refusing to grant defendant Pool's motion for a new trial, which was based in part upon the instruction set forth hereinabove in paragraph 11.

13. The Court erred in instructing the jury in the following manner:

But, as I said before, if Sage and Gaither were taken into custody by the defendant, under color of law, by reason of the positions held by the defendants, then the ordeal to which the defendant, Pool, subjected both Sage and Gaither and the ordeal to which the defendant, Clifton, subjected Sage at a

point near Nellis Air Force Base constituted a violation of the Federal statute.

14. The Court erred in refusing to grant defendant Pool's motion for a new trial, which was based in part upon the instruction set forth hereinabove in paragraph 13.

15. The Court erred in instructing the jury in the following manner:

In order to convict defendants Pool and Clifton under Count I it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving Sage of a Constitutional right—that is to deprive him of the right to be tried by a court, to be tried in an orderly way and to receive, if found guilty, the usual pains and punishment for any offense he may have committed; and in order to convict Pool under Count II it is necessary for the jury to find that the defendant had in mind the specific purpose of depriving Gaither of a Constitutional right, that is, to deprive him of the right to be tried by a court, to be tried in an orderly way and to receive, if found guilty, the usual pains and punishment for any offense he may have committed.

16. The Court erred in refusing to grant defendant Pool's motion for a new trial, which was based in part upon the instruction set forth hereinabove in paragraph 15.

17. The Court erred in instructing the jury in the following manner:

If you find the acts alleged in the indictment to have been committed, then let me summarize the questions you have to determine:

As to Count I,

(1) Did defendants Pool and Clifton take Sage into custody under color of law?

(2) Did defendants Pool and Clifton specifically intend to deprive Sage of a constitutional right guaranteed to him by the United States Constitution?

(3) Has the government established these two foregoing essentials to your satisfaction beyond a reasonable doubt?

If the government has done so it is your duty to find the defendants guilty in this case. If you have a reasonable doubt upon either of the two essentials, it is your duty to acquit the defendants.

As to Count II,

(1) Did defendant Pool take Gaither into custody under color of law, and

(2) Did defendant Pool specifically intend to deprive Gaither of the constitutional right guaranteed to him by the United States Constitution?

(3) Has the Government established these two foregoing essentials to your satisfaction beyond a reasonable doubt?

If the Government has done so it is your duty to find the defendant guilty in this case. If you have

a reasonable doubt upon either of these two essentials, it is your duty to acquit the defendants.

18. The Court erred in refusing to grant defendant Pool's motion for a new trial which was based in part upon the instruction set forth hereinabove in paragraph 17.

/s/ MORTON GALANE,  
Attorney for Defendant-  
Appellant.

The undersigned Morton Galane, an attorney of record for the appellant herein, states that the attached Statement of Points on Appeal was this 4th day of February, 1958, served by Certified, Return Receipt Mail on the attorney for Respondent:

HOWARD W. BABCOCK,  
Assistant United States  
Attorney.

/s/ MORTON GALANE.

[Endorsed]: Filed February 6, 1958.